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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 107.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,

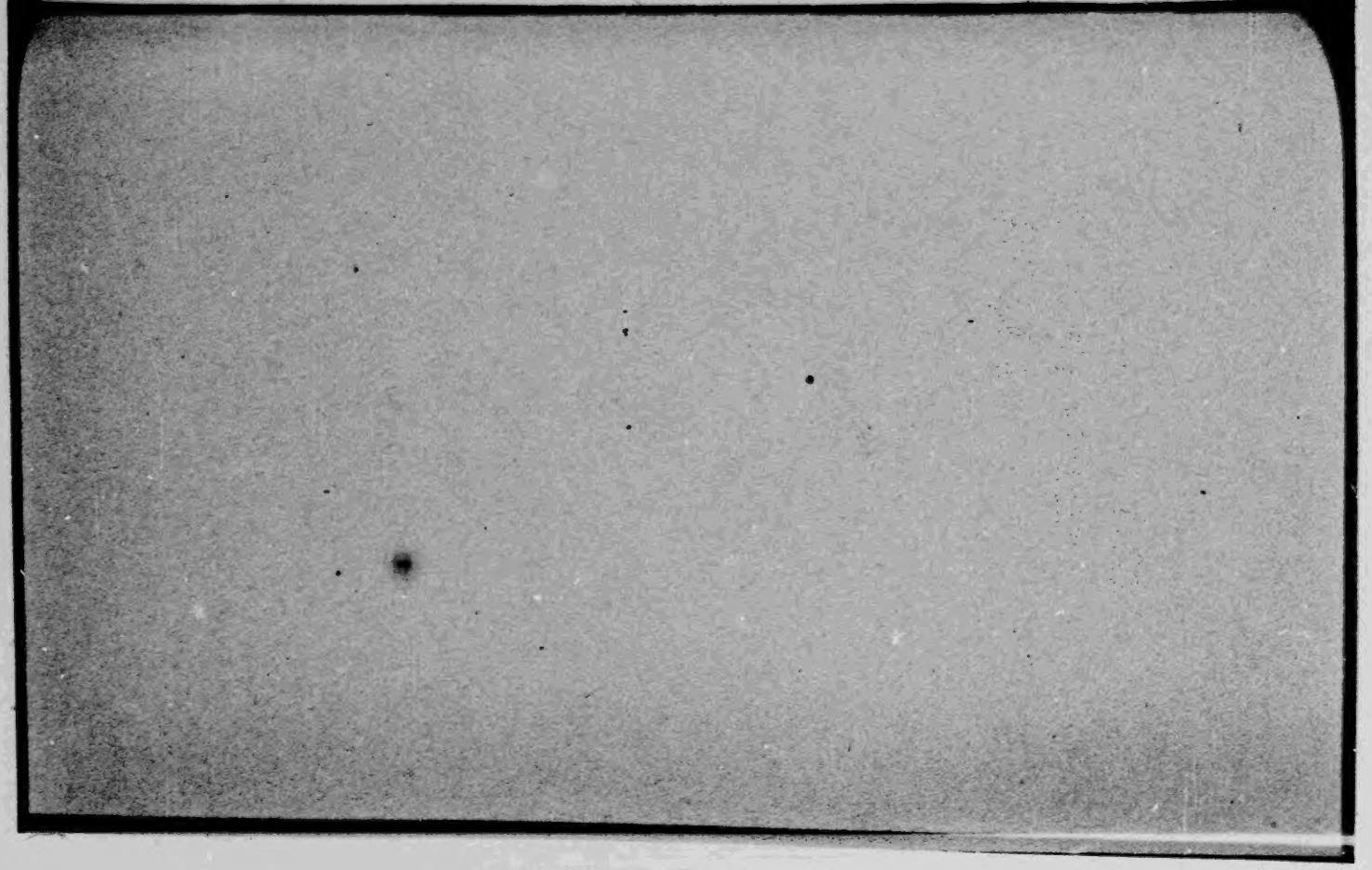
vs.

THE STATE OF WASHINGTON *EX REL.* A. G. LINHOFF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED OCTOBER 6, 1911.

(22,892)



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1 N— Sept. 6, '10.

9058.

Filed Sep. 10, 1910. C. S. Reinhart, Clerk.

2 No. 71874.

STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Relator-Respondent,

vs.

THE SEATTLE, RENTON & SOUTHERN —, Respondent-Appellant; The Seattle Electric Company, Respondent-*Respondent*.

Transcript on Appeal from the Superior Court of the State of Washington in and for the County of King to the Supreme Court of the State of Washington.

Filed Sep. 1, 1910. D. K. Sickels, Clerk.

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4 In the Superior Court of the State of Washington in and for the County of King.

No. —.

STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Relator,

vs.

THE SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Writ of Mandamus.

The State of Washington to the above named respondents and each of them, to-wit, The Seattle Electric Company, a corporation, and The Seattle, Renton & Southern Railway Company, a corporation:

Whereas, It manifestly appears to the court by the affidavit of A. G. Linhoff, a party beneficially interested herein, which said affi-

davit is hereto attached and made a part of this writ, that it is the duty of the Seattle Electric Company, a corporation, and The Seattle, Renton & Southern Railway Company, a corporation, and each of them, to issue transfers upon presentation of a five cent fare, on school children's ticket, when presented by a school child, from all its lines within the city limits to all of the lines of said other company, and that it is the duty of said companies and each of them, to receive the transfers so issued by such other company, and to carry such passenger thereon to any point on its lines within the city limits, in the same manner as upon the payment of a five-cent fare, and that such transfers should be redeemed upon a fifty (50%) per cent basis of the fare received by the company issuing the same; and

Whereas, it further appears that said companies, and each of them, have failed and refused to issue and receive transfers as above set forth, or at all, and that it is their plain duty to exchange transfers on a fifty (50%) per cent. basis of settlement, and that this relator has suffered and is suffering continuing and irreparable injury, and that there is not a plain, speedy or adequate remedy in the ordinary course of law; now therefore

You are hereby commanded, that you and each of you immediately upon receipt and service of this writ upon you, issue transfers when demanded upon presentation of a five-cent fare, or school children's ticket, when presented by a school child, from all of your lines within the city limits to all of the lines of said other company, and that you, and each of you, receive the transfers so issued by such other company, and carry such passenger to any point on your line within the city limits, upon a fifty (50%) per cent. basis of redemption by each company of every transfer so issued by it; or that you show cause before this court, at the court room thereof, in department No. 5, in the City of Seattle, King county, Washington, on the 3rd day of February, 1910, at the hour of 1:30 P. M. why you have not done so, and that you then and there make due return to this writ.

Done in open court this 31 day of January, 1910.

WILSON R. GAY, *Judge*.

In the Superior Court of the State of Washington in and for the County of King.

No. —.

STATE OF WASHINGTON on the Relation of A. G. LINZOFF, Relator,

vs.

THE SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Petition for Writ of Mandate.

Comes now the relator, by his attorneys Scott Calhoun and H. D. Hughes, and prays the court that a writ of mandate issue herein, directed to the Seattle, Renton & Southern Railway Company, a

Corporation, and to the Seattle Electric Company, a Corporation, commanding said companies, and each of them, to issue transfers upon presentation of a five-cent fare, or school children's ticket, when presented by a school child, from all its lines within the city limits to all of the lines of said other company, and commanding said companies, and each of them, to receive the transfers so issued by such other company, and to carry such passenger to any point on its lines within the city limits in the same manner as upon the payment of a five-cent fare, upon a fifty (50) per cent. basis of redemption, or such other basis as may to the court seem just and legal; or to appear at a date to be fixed by the court and show cause why they should not be required to exchange transfers as above prayed for.

And your relator further prays that he be granted such other and further relief in the premises as to the court seems just, legal and equitable.

7 This petition is based upon the affidavit of the relator hereto attached and made a part hereof, and upon the records and files in this cause.

SCOTT CALHOUN.
H. D. HUGHES.
Attorneys for Relator.

8 In the Superior Court of the State of Washington in and for the County of King.

No. —.

THE STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Relator,
vs.
THE SEATTLE, RENTON AND SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Affidavit.

STATE OF WASHINGTON,
County of King, ss:

A. G. Linhoff, being first duly sworn, deposes on oath and says:

1. That he is the relator in the above entitled action and is over the age of twenty-one years; that he is a citizen of *of* County of King, and state of Washington, and resides in what is known as Rainier Valley District, situated in the city of Seattle.

2. That the Seattle Electric Company is a corporation organized and existing under the laws of the State of Washington with its place of business in the city of Seattle; that on or about the 9th day of March 1900 the City of Seattle passed a certain ordinance entitled "An ordinance granting to J. D. Lowman and Jacob Furth, and successors and assigns, a franchise to construct, maintain and operate street railways in the City of Seattle", being Ordinance No. 5874; and said Ordinance was accepted on the 31st day of March 1900 and as-

signed on or about August 30, 1900 by the said J. D. Lowman and Jacob Furth to the Seattle Electric Company, being Comptroller's file No. 102. That under the authority of said Ordinance and of subsequent Ordinances granting franchises for the construction and
9 extension of additional lines, the Seattle Electric *Electric* company engaged in the business of maintaining and operating a street railway system in the City of Seattle, and has at all times since been engaged therein. That under and by virtue of the terms of said franchises whereunder the city of Seattle surrendered to the Seattle Electric Company the right to maintain and operate such street railway system and as the consideration for such grant, it became the duty of the Seattle Electric Company to issue and receive transfers to and from all its lines to and from the lines of the said Seattle Renton and Southern Railway Company.

3. That the Seattle Renton and Southern Railway Company is a corporation organized and existing under the laws of the State of Washington with its principal place of business in the City of Seattle which said company is the successor of the Rainier Avenue Electric Company, a corporation organized in 1890 and engaged in operation of a street railway line, authorized by Ordinance No. 4141 entitled "An Ordinance granting to S. L. Bowman and his assigns, a franchise to build and operate a street railway in the city of Seattle" approved July 18, 1890 as amended by Ordinance No. 1488. That the said Seattle Renton and Southern Railway Company is now engaged in the operation of said line and extensions thereof, under that certain franchise passed April 22, 1907, entitled "An Ordinance granting to William R. Crawford his successors and assigns a franchise to construct, maintain and operate a system of street railways in the City of Seattle"; that under and by virtue of the terms — said franchise whereunder the people of the City of Seattle surrendered the right to operate and maintain such railway system and as the consideration for the granting of such right it became the duty of the Seattle Renton and Southern Railway Company to issue and receive transfers to and from all its lines to and from all the lines of the said Seattle Electric Company.

10 4. That the lines of each of the said companies intersect at certain junction points. That by the terms of each of the aforesaid franchise ordinances it is made the mutual duty of each of said companies to issue transfers when demanded to any passenger presenting a five cent fare or to any school children presenting a school children's ticket, to the lines of such other company so that any passenger may ride for such single fare from any point within presenting a five cent fare or to any school children presenting the city limits on the lines of one of said companies to any point within said limits on the lines of such other company, where the said tracks so intersect as to form practically a continuous line of railway in any one general direction; and it is further made the duty of each of said companies to receive such transfers and to carry the passenger presenting same to any point within the city limits situated on its lines.

5. That in each and every case where transfers may be issued by the said companies the line and run or local route of the Seattle

Electric Company equals or exceeds that of the Seattle Renton and Southern Railway Company, and that from each and every transfer point the length of ride afforded by the Seattle Electric Company for a single fare as aforesaid equals or exceeds that of the Seattle Renton and Southern Railway Company entitled to more than 50% of such fares on each transfer issued or received. That in no event is the Seattle Renton and Southern Railway Company entitled to more than 50% of such fare, and that it is the legal duty of the Seattle Renton and Southern Railway Company and of each of said companies to exchange transfers upon a 50% basis of redemption.

6. That your relator on the 28th day of January 1910 entered upon one of the cars of the Seattle Electric Company and proceeded southward to the intersection of the Seattle Renton and Southern Railway Company; that he paid said Seattle Electric Company the sum of five cents and demanded a transfer to the line of the
11 Seattle Renton and Southern Railway Company at the junction point, so that he might be carried to his residence for the sum of five cents, and that the said Seattle Electric Company failed and refused to issue such transfer. That this affiant then informed the conductor of the Seattle Renton and Southern Railway line that he had transferred at such point from the Seattle Electric Company line and demanded to be carried to his residence free of further charge. The demand was refused and this relator was compelled to pay a second fare. That on the following morning this deponent paid a five cent fare on the line of the Seattle Renton and Southern line and demanded a transfer to the Seattle Electric Company's point of intersection at Second Avenue, so that he might proceed northward to his place of business and that said company refused such demand and failed to issue such transfer. That this affiant then boarded a north bound car of said Seattle Electric Company at such junction point and informed the conductor that he had paid his fare on the Seattle Renton and Southern and demanded that he be carried free of further charge, which demand was refused and this deponent was compelled to pay a second fare.

And that each of said companies have at all times since failed to issue and receive such transfers.

7. That at all times subsequent to the passage of the franchise ordinance aforesaid it has been the duty of each of said companies thereunder to issue transfers to the lines of such other company, to any passenger paying the aforesaid fare, who demands such transfer, and it is further the mutual duty of said companies and each of them, to receive such transfers as may be so issued, and to transport such passenger, either by transfer or a single fare, to any point on its lines in the same general direction and to grant him the same rights in each and every respect as are granted a passenger presenting a five cent fare at said transfer point. That said companies
12 have at all times violated the duty above defined and have at all times failed and refused to issue and receive transfers as aforesaid in spite of the common demand made theretofore, causing the public a great and continuous loss. That as the result of such violation of the franchise duties reciprocally imposed on said companies by said franchises, every passenger desiring to proceed over

both of the lines of such companies have been compelled to pay a double fare instead of the one single fare which said franchises provide for, and thereby the said companies have been making a wrongful and illegitimate profit from passengers amounting to many hundreds of dollars per week. That such procedure will be constantly continued unless a writ of mandate issue out of this court commanding each of said companies to exchange transfers upon the presentation of a five-cent fare, or a school children's ticket as aforesaid.

8. That there are many thousands of families residing in said Rainier Valley who have as their only means of transportation the lines of the Seattle Renton and Southern Railway Company, a large percentage of whom work in the business and factory districts of the City of Seattle. That it is daily necessary for such people to use the connecting lines of the Seattle Electric Company and the Seattle Renton and Southern Railway Company, and that said residents of the district aforesaid have built houses and improved their lands and taken up their residence because of the street car facilities aforesaid, and because of their reliance upon the said companies complying with their franchise duty and so exchanging transfers that the residents of said districts could be carried between their homes and places of business by the payment of one fare, in the same manner as the residents of other districts of the City of Seattle are carried on the lines of the street cars operating in said city. That the double fare now extorted by said lines has greatly in-
13 jured the said Rainier Valley district, and has prevented the growth of said district and greatly handicapped its development. That the relator as aforesaid resides and owns considerable property in said valley, all of which is served exclusively by the Seattle Renton and Southern line. That he has improved and made his home on part of such property, relying upon said companies performing their franchise duties and carrying him over the lines of each of said companies upon the payment of one fare as aforesaid, in the same manner as the residents of other districts are transported. That because of the violation by said companies of such franchise duties he has been greatly and seriously injured. The value of his property and improvements has been seriously depreciated and their proper developement and appreciation prevented. That he is daily subjected to a wrongful loss by reason of the illegal fare so charged to his family and self and children, and that said injury will continue in the future until such time as the court may command said companies to exchange transfers as prayed for.

9. That unless the said companies shall exchange transfers as aforesaid, he will be irreparably injured and damaged and that your relator has no adequate clear or speedy remedy in the ordinary course of law. That the duty so imposed, of exchanging transfers, is a mutual, inseparable duty and that neither of said companies can be compelled to issue or receive transfers unless the other said company shall likewise issue and receive transfers, nor can your relator obtain any relief unless a writ issue against the aforesaid companies as prayed for.

A. G. LINHOFF.

Subscribed and sworn to before me this 31st day of January, 1910.

J. B. DENNIS,
Notary Public in and for the State of Washington, Residing at Seattle.

Filed Jan. 31, 1910. D. K. Sickles, Clerk.

In the Superior Court of the State of Washington in and for the County of King.

No. 71874.

STATE OF WASHINGTON on the Relation of A. C. LINHOFF, Relator,
vs.
THE SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Answer of The Seattle Electric Company.

Comes now the Seattle Electric Company, one of the above named respondents, and answering the alternative writ of mandate issued in the above entitled cause, and the affidavit upon which said writ is based, alleges:

First, for a first and affirmative defense:

I.

On the 19th day of January, 1910, the city of Seattle, acting by its corporation Counsel and Assistant Corporation Counsel, requested The Seattle Electric Company to exchange transfers with the Seattle, Renton & Southern Railway Company, which said request was in the following language, to wit:

"JANUARY 19, 1910.

Seattle Electric Company, Seattle, Wash.

GENTLEMEN: In pursuance of a resolution duly passed by the City Council, the City of Seattle, through its legal department, hereby makes demand upon the Seattle Electric Company for the exchange of transfers with the Seattle Renton & Southern Railway Company.

Your franchise imposes the duty upon you of issuing and receiving transfers to and from the lines of the Seattle, Renton & Southern Railway Company. Up to the present time you have neither issued nor received transfers to and from the lines of said company, nor have you made any offer for such exchange.

You are therefore requested to make formal offer, both to the City of Seattle and the Seattle, Renton & Southern Railway Company, to issue and receive transfers to and from all of your lines to and from

the lines of said company, and to issue and receive such transfers in fact, to and from the lines of said company.

Yours truly, SCOTT CALHOUN,
Corporation Counsel.
By H. D. HUGHES, *Assistant.*

II.

On the 24th day of January, 1910, The Seattle Electric Company replied to said request as follows, to wit:

"JANUARY 24, 1910.

Messrs. Scott Calhoun, Corporation Counsel, and Howard D. Hughes, Assistant Corporation Counsel, Seattle, Wash.

DEAR SIRS: Your letter of the 20th inst., to The Seattle Electric Company, in reference to an exchange of transfers by the Seattle Electric Company with the Seattle, Renton & Southern Railway Company, received.

The Seattle Electric Company, on the terms set forth in Ordinance No. 5871 of the City of Seattle, will exchange transfers with the Seattle, Renton & Southern Railway Company, to and from all lines, on the basis of a cash redemption at the rate of two and one-half ($2\frac{1}{2}$) cents for ordinary transfers, and one and one-fourth ($1\frac{1}{4}$) cents for school children transfers of The Seattle Electric Company will redeem its transfers on such basis and accept from the Seattle, Renton & Southern Railway Company redemption of the transfers of that company at such higher rate of redemption as the franchise of that company requires.

Very truly yours,
THE SEATTLE ELECTRIC COMPANY,
By JACOB FURTH, *Pres't.*"

III.

That prior to said request The Seattle Electric Company was, has been and is ready and willing to exchange transfers with the Seattle, Renton & Southern Railway Company, on the terms and conditions set forth in the letter of The Seattle Electric Company to the Corporation Counsel, hereinbefore set forth, upon the Seattle, Renton & Southern Railway Company agreeing to such exchange of transfers on said basis, and The Seattle Electric Company is still ready and willing to exchange transfers on said basis, or on the basis set forth in said Ordinance No. 5871 of the City of Seattle, entitled: "An Ordinance granting to J. D. Lowman and Jacob Furth, their successors and assigns, a franchise to construct, maintain and operate Street Railways in the City of Seattle," approved March 9, 1900, and duly published.

For a second defence, respondent alleges

I.

Admits each and every allegation contained in Paragraph 2, except that respondent denies that it is its duty to exchange transfers with the Seattle, Renton & Southern Railway Company, except upon the terms and conditions set forth in said Ordinance No. 5874 of the City of Seattle, entitled: "An Ordinance granting to J. D. Lowman and Jacob Furth, their successors and assigns, a franchise to construct, maintain and operate Street Railways in the City of Seattle," approved March 9, 1900.

17

II.

Denies each and every allegation contained in Paragraph 4, except that respondent admits that the lines of said companies intersect and that respondent is required to issue transfers in accordance with the provisions of said ordinance No. 5874, hereinbefore mentioned.

III.

Admits each and every allegation contained in Paragraph 5, except that respondent denies that it is obliged to accept upon the basis mentioned in said Ordinance No. 5874.

IV.

Respondent has no knowledge or information sufficient to form a belief as to any of the allegations contained in Paragraph 6, except that respondent admits that transfers have not heretofore been exchanged between said companies mentioned in said paragraph.

V.

Denies each and every allegation contained in Paragraph 7, except that respondent admits that it is obligated to issue transfers in accordance with the provisions of said Ordinance No. 5874.

VI.

Admits the allegation contained in Paragraph 8, that there are many people residing in Rainier Valley. Denies each and every other allegation contained in said Paragraph 8, except that respondent admits that it is obligated to issue transfers on the terms and conditions mentioned in said Ordinance No. 5874.

VII.

Denies each and every allegation contained in Paragraph 9, except that respondent admits that it is obligated to issue transfers upon the terms and conditions mentioned in said Ordinance No. 5874.

18 Wherefore, respondent prays that said writ of mandate be dismissed as to it, and for its costs and disbursements.

JAMES B. HOWE,
Attorney for The Seattle Electric Company.

STATE OF WASHINGTON,
County of King, ss:

Jacob Furth, being duly sworn, on oath deposes and says that he is president of The Seattle Electric Company, a corporation, one of the respondents in the above entitled action; that affiant has read the foregoing answer, knows the contents thereof and believes the same to be true; that he makes this verification because said respondent is a corporation and affiant is its President.

JACOB FURTH

Sworn to and subscribed before me this 3rd day of February, 1910.

H. R. THOMPSON,
Notary Public in and for the State of Washington, Residing at Seattle, in said State.

Copy of within answer received and service acknowledged this 3 day of Feb. 1910.

H. D. HUGHES,
Attorneys for Relator.

Filed Feb. 3, 1910. D. K. Sickles, Clerk.

In the Superior Court of the State of Washington for King County.

No. 71871.

STATE OF WASHINGTON on the Relation of V. G. LINDSLEY, Relator,
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Answer of Seattle, Renton & Southern Railway Company, Respondent.

Comes now the respondent, Seattle, Renton & Southern Railway Company, and for its return and answer to the petition and alternative writ herein alleges:

I.

That at all the times hereinafter mentioned the said respondent Seattle, Renton & Southern Railway Company was and now is a corporation duly incorporated and doing business under the Laws of the State of Washington operating an electric line of railroad extending from the city of Seattle, over and along certain streets therein, to the Town of Renton, Washington.

II.

That on or about the 8th day of May, 1908, the said Railway Company, respondent herein, obtained by proper assignment all the

rights and privileges given to one William R. Crawford to operate certain lines of railway on certain streets in the City of Seattle, granted by the City of Seattle as set out in ordinance No. 15919; and that since May 18, 1908, the said Railway Company respondent herein, has been and is now operating certain lines of railway constructed by virtue of the franchises expressed by said Ordinance No. 15919 and under no other franchises granted by the city of Seattle for constructing and operating railways on the streets of the city.

20

III.

That under and by virtue of section ten (10) of said Ordinance No. 15919 the said Railway Company, respondent herein, did release all of its rights, privileges and franchises granted prior to May 18, 1908, to the said Railway Company, respondent herein, and to any and all of its predecessors on interest; and further did by quit-claim deed convey all of its right and title for street purposes in and to all tracts or parcels of land extending from Fourteenth Avenue and Washington Street to the corner common to Sections 26, 27, 34 and 35, Township 24, North, Range 4 East, W. M., then used by said Railway Company as right-of-way, and further that said release and deed were duly accepted by the said city of Seattle.

IV.

That in section 4 of said Ordinance No. 15919 it is provided as follows:

"Transfers.—The payment of a cash fare or the presentation of a ticket shall entitle the passenger to a transfer to any line of any street railway company now operating within the city limits, or that may hereafter operate therein, which shall give and receive transfers to and from all the lines owned, operated or controlled by such company, to and from the lines of grantee, his successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received, but no such transfer shall be good except upon the first connecting car at the point of transfer and upon a car going in the same general direction, and said grantee, his successors and assigns, may make reasonable rules and regulations not in conflict herewith, respecting the giving and receiving of transfers for the prevention of fraud."

21

V.

That since the 18th day of May, 1908, the Seattle, Renton & Southern Railway Company, respondent herein, has not only been ready and willing but has been anxious to interchange transfers upon the basis as set out in its said contract with the City of Seattle regarding the issuance and receiving of transfers to and with other lines of railway in said city, that the said Railway Company notified

A. V. Bouillon, as Superintendent of Public Utilities of the City of Seattle, of its said willingness and readiness to comply with said contract provision of its said Ordinance No. 15919 as set out above regarding transfers, and at the request of the said Superintendent of Public Utilities this respondent, Seattle Renton Railway Company, notified the Seattle Electric Company, the other respondent herein, operating all of the other lines of railway within the City of Seattle connecting with the lines of this respondent company, of its willingness and readiness to enter into the interchange of transfers under the terms and conditions set forth in its said contract franchise evidenced by Ordinance No. 15919, and this respondent is now and has always been ready and willing to comply with the terms and conditions of said ordinance No. 15919 in that respect, namely, regarding the issuance and receiving of transfers.

VI.

That said transfer provision set out above contained in Ordinance No. 15919 entitles the Seattle, Renton & Southern Railway Company to a larger proportion of the fare paid by any passenger giving or receiving a transfer to and from the lines of this respondent company than fifty per cent (50%) of such fare, that on or about the 18th day of September, 1908, the said City of Seattle duly notified this respondent and also the Seattle Electric Company, the other respondent herein, that it this respondent company was entitled under the terms and conditions of said transfer provision in Section 4 of said Ordinance No. 15919 to receive from the Seattle

22 Electric Company an average per cent of fifty-nine and one-half (59½) of the fares paid upon transfers issued by the said The Seattle Electric Company going over the lines of the Seattle Renton & Southern Railway Company, respondent herein; and further that this respondent company would be obliged to pay to the Seattle Electric Company, the other respondent herein, an average per cent of forty and one-half (40½) of all the fares paid for which the Seattle Electric Company, respondent herein, collected the transfers issued by this respondent company; but that was not the true proportion to which this respondent company was entitled under said franchise on account of the giving and receiving of transfers to and from the said The Seattle Electric Company, the other respondent herein, but the correct percentage to be received by this respondent was greatly in excess of said average per cent of fifty-nine and one-half (59½), and the percentage to be paid upon such transfers by this respondent was at such time much less than the average per cent of forty and one-half (40½) and that the percentage that this respondent would have been entitled to at that time on an interchange of transfers with the said The Seattle Electric Company, respondent herein, was not less than seventy-five per cent (75%).

VII.

That since the said 18th day of September, 1908, this respondent company has added to its said lines of railroad additional miles

over which it now operates its cars, and further that the run or local route of the cars of this respondent company has been extended, and therefore at this time this respondent company would be, under the terms and conditions of said contract with the City of Seattle evidenced by Ordinance No. 15919, entitled to not less than eighty per cent (80) on the interchange of transfers with the said. The Seattle Electric Company, the other respondent herein.

23 VIII.

That it is provided by that certain section 4 of Ordinance No. 15919, as set out above, that this respondent company shall give and receive transfers to and from any other line of street railway operated within the city limits which shall give or receive transfers from the lines of this respondent company under the terms and conditions as expressed in said paragraph of said section 4 of said Ordinance No. 15919; that there is not now and never has been any other line of any other company being operated within the limits of the City of Seattle which will give or receive transfers to or from the lines of this respondent company upon the terms and provisions of said section 4 of said Ordinance No. 15919, but the only other company owning or operating any other line in the City of Seattle to or from which lines this company could give or receive transfers refuses and has always refused to give and receive transfers under the terms and conditions as set out above in Ordinance No. 15919 under which this respondent company is operating its lines of railway on certain of the streets of the City of Seattle; and this respondent alleges that it always has been and now is ready, willing, able to and anxious to give transfers to any other line of street railway operated within the limits of the City of Seattle which shall give and receive transfers to and from the lines of this Company, respondent herein, upon the terms and conditions of said paragraph of said Section 4 of said Ordinance No. 15919.

IX.

Respondent denies that in each and every case where transfers may be issued by the respondents the line and run or local route of the Seattle Electric Company equals or exceeds that of the Seattle, Renton & Southern Railway Company, and moreover that such provision is not anywhere contained in the transfer contract of this respondent company evidenced by the transfer provisions set out above in Ordinance No. 15919.

24 X.

That prior to the acceptance of Ordinance No. 15919 by said William R. Crawford the question of the interchange of transfers between the lines authorized by said Ordinance No. 15919 and the lines of the Seattle Electric Company, the other respondent herein, was taken up and discussed at length before the Corporation Committee of the City Council of the City of Seattle and that not only once but many times the said William R. Crawford absolutely re-

fused to accept any franchise from the City of Seattle for the said lines of railway as authorized by Ordinance No. 15919 if the said ordinance *if the said ordinance* would contain any provision regarding transfers which would compel the lines constructed and operated under said Ordinance No. 15919 to interchange transfers with the Seattle Electric Company on a basis of a fifty per cent (50%) division of the fares received by either company.

XI.

That by the terms and conditions of said contract entered into between said William R. Crawford, his successors and assigns, and the said city of Seattle, evidenced by Ordinance No. 15919, there is only one method for the interchange of transfers to and from other lines operated within the limits of the City of Seattle owned or operated by other companies, such provision being set out above; and that the compelling of the Seattle, Renton & Southern Railway Company, the successor and assignee of said William R. Crawford, of all rights, privileges and franchises set out in said Ordinance No. 15919, to give or receive transfers on any other basis than the basis set forth in said Ordinance would take from this Railway Company, respondent herein, property without due process of law and contrary to the constitution of the State of Washington and the Constitution of the United States, and would cause irreparable loss and damage to this respondent, as any division on a fifty per cent (50%) basis on an interchange of transfers with The Seattle Electric Company's lines in the City of Seattle would be far less than under the basis set forth in said paragraph of said Section 1 of said Ordinance No. 15919, and would decrease the earnings of this company, respondent herein, to such a degree that it would not be able to pay its operating expenses, fixed charges, depreciation and the interest on its bonded debt and would absolutely bankrupt this respondent company.

XII.

That under the said contract evidenced by Ordinance No. 15919 this Railway Company, respondent herein, was given the right and privilege of constructing and operating lines of railway upon certain streets of the City of Seattle as soon as the same had been graded, to-wit: Dearborn Street, from Rainier Avenue to Seattle Boulevard; Seattle Boulevard intersection with Dearborn Street and Fifth Avenue South; Fifth Avenue South from Dearborn Street to King Street; Fourth Avenue, from Pine Street to Blanchard Street; Blanchard Street, from Fourth Avenue, to Third Avenue; Third Avenue from Blanchard Street to Pine Street; Sixteenth Avenue South; from Dearborn Street to Atlantic Street; thence on Atlantic Street to Twenty-Seventh Avenue South, thence on Twenty-Seventh Avenue South to Rainier Avenue; that one of the principal considerations for the acceptance of said contract by this Railway Company, respondent herein, was that it would be enabled to operate continuous lines of railway over all of the routes set out in said Ordinance No. 15919, being Routes 1 to 5, both inclusive, making thereby a system of railway lines; that none of the streets mentioned

above have been graded and this respondent railway company has not been and is not able to lay down its tracks and operate its lines of railway over and along said streets, or any of them, and thus be enabled to transfer passengers, freight and mail without, in many cases, any necessity for any transfers to any other line or lines of railway in the City of Seattle owned by any other company, although willing, ready and financially able to do so.

26 Wherefore, this respondent prays that said alternative writ may be discharged, and for its costs and disbursements herein expended.

MORRIS B. SACHS,
Attorney for Respondent Seattle, Renton & Southern Ry. Co.

STATE OF WASHINGTON,
County of King, ss:

W. R. Crawford being first duly sworn, on oath says: That he is President of the Seattle, Renton & Southern Ry. Co., Respondent in the above entitled action; that he has read the foregoing answer knows the contents thereof, and that he believes the same to be true, that he makes this affidavit as such president and in behalf of the respondent because it is a corporation.

W. R. CRAWFORD.

Subscribed and sworn to before me this 2d. day of February, 1910.

MORRIS B. SACHS,
Notary Public in and for the State of Washington, Residing at Seattle.

Filed Feb. 17, 1910. D. K. Sickles, Clerk.

27 In the Superior Court of the State of Washington for King County.

Hon. Wilson R. Gay, Judge.

STATE OF WASHINGTON ex rel. A. G. LINHOFF, Plaintiffs,
vs.
THE SEATTLE, RENTON AND SOUTHERN RAILROAD COMPANY, a Corporation, and THE SEATTLE ELECTRIC COMPANY, a Corporation, Defendants.

THURSDAY, *February* 17, 1910.

This cause comes on regularly this day for hearing.

The plaintiff appears by counsel, H. Hughes, Esquire.

The respondent Seattle, Renton & Southern Railroad Company appears by its attorney M. B. Sachs, Esquire.

The respondent Seattle Electric Company appears by its counsel James B. Howe.

J. W. McCoy is duly and regularly sworn and examined in behalf of the plaintiff.

Plaintiff's Exhibit A. map.

Plaintiff's Exhibit B.

Plaintiff's Exhibit C. map.

Filed.

The plaintiff rests.

Respondent Seattle, Renton and Southern Railroad Company's exhibit 1 list filed.

Respondents rest.

After argument by the respective counsel the court finds for the plaintiff and the respective respondents are to exchange transfers at a basis of 50¢ counsel for respondent Seattle, Renton and Southern Railroad Company in open court gives notice of appeal to the Supreme Court of the State of Washington.

The Supersedeas Bond is fixed at Ten Thousand Dollars ($10,000.00).

Journal 342, page 374.

28 In the Superior Court of the State of Washington for King County.

No. —.

THE STATE OF WASHINGTON ex Rel. A. G. LINHOFF, Relator,

vs.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Findings of Fact and Conclusions of Law Asked for by Respondent Seattle, Renton & Southern Railway Company.

This cause coming regularly on for trial on the — day of February, 1910, and the relator appearing in person and by his counsel, Scott Calhoun and H. D. Hughes, and the respondents, Seattle, Renton & Southern Railway Company, a corporation, and The Seattle Electric Company, a corporation, appearing by their respective counsel, M. B. Sachs and James B. Howe, and evidence having been introduced by the respective parties, and the court being fully advised in the premises, finds as follows:

I.

That ever since and prior to the 4th day of May, 1908, the respondent, Seattle, Renton & Southern Railway Company, was and now is a corporation duly incorporated and doing business under the laws of the State of Washington operating an electric line of railroad extending from the City of Seattle, over and along certain streets therein, to the Town of Renton, King County, Washington.

II.

That on or about the 4th day of May, 1908, the Seattle, Renton & Southern Railway Company, respondent herein, obtained by proper assignment all the rights and privileges given to one William R. Crawford to operate certain lines of railway on certain streets in the City of Seattle granted by the City of Seattle as set out in Ordinance No. 15919; and that since May 18, 1908, the said railway company, respondent herein, has been and is now operating certain lines of railway constructed by virtue of the franchises expressed by said Ordinance No. 15919 and under no other franchise granted by the City of Seattle for constructing and operating railways on the streets of said city.

III.

That under and by virtue of Section 10 of said Ordinance No. 15919 the said railway company, respondent herein, did release all of its rights, privileges and franchises granted prior to May 18, 1908, by the City of Seattle to said railway company, respondent herein, and to any and all of its predecessors in interest; and further did by quit-claim deed convey all of its right and title, for street purposes, in and to all tracts or parcels of land extending from Fourteenth Avenue South and Washington Street in the City of Seattle to the corner common to Sections 25, 26, 34 and 35, Township 24 North, Range 4 East, W. M., being Kenyon Street in the City of Seattle, which said strip of land was then used by said railway company as right-of-way; and further that said release and deed were duly accepted by the City of Seattle; and that the said Seattle, Renton & Southern Railway Company is now and has been since the 18th day of May, 1908, operating its line of road as far south as Kenyon Street under and by virtue of the terms and conditions of its franchise as evidenced by Ordinance No. 15919 as aforesaid.

IV.

That said Ordinance No. 15919 vests in the Seattle, Renton & Southern Railway Company the right to construct, maintain and operate five distinct routes over certain streets of the City of Seattle. That the Seattle, Renton & Southern Railway Company is at present operating on only three of said routes, namely: Route 1, a portion of Route 2 and a portion of Route 4, and no others.

V.

That the Seattle, Renton & Southern Railway Company has upon Route 1 two different runs of cars, one run or local route of cars to Brighton, and one run or local route of cars to said Kenyon Street or beyond said point, cars being operated on said local routes or runs.

VI.

That the Seattle Electric Company is a corporation organized and existing under the laws of the State of Washington with its principal place of business at the City of Seattle; that said company operates railway systems in the city of Seattle granted by the City of Seattle to Lowman and Furth under Ordinance No. 5874, which said ordinance was duly assigned by said Lowman and Furth to The Seattle Electric Company; that said Ordinance No. 5874 provides for twenty-two different routes or lines of street railway in the City of Seattle, all of which said lines are now being operated by The Seattle Electric Company.

VII.

That at certain street intersections some of the said lines or routes of The Seattle Electric Company and the routes or lines of the Seattle, Renton & Southern Company intersect.

VIII.

That The Seattle Electric Company's Franchise, evidenced by Ordinance No. 5874, provides as follows in Section 1 of said franchise:

Transfers:—Any passenger who has paid fare, shall, on request, be furnished with a transfer to that certain system of street railways authorized by Ordinance No. 5277, entitled "An Ordinance authorizing Winthrop Smith, Albert Stone and Andrew F. Burleigh, their successors or assigns, to construct, operate and maintain a street railroad in the City of Seattle," approved March 15th, 1899, or to that certain line of street railway, when constructed and in operation, authorized to be constructed within the limits of the City of Seattle by Ordinance No. 5444, entitled "An Ordinance authorizing the Seattle-Tacoma Railway Company, its successors or assigns, to construct, operate and maintain a street railway in the City of
31 Seattle," approved July 14th, 1899, or to that certain line of street railway authorized by Ordinance No. 1879, entitled "An Ordinance granting to Fred E. Sander, his successors and assigns, a franchise to build and operate a street railway in the City of Seattle," approved October 31st, 1891, as amended by Ordinance No. 2607, approved February 28th, 1893; or to that certain line of street railway authorized by Ordinance No. 1441 entitled "An Ordinance granting to S. L. Bowman and his assigns, a franchise to build and operate a street railway in the City of Seattle," approved July 19th, 1890, as amended by Ordinance No. 1488, approved September 2 1890; provided, that this provision respecting transfers to said other lines shall be in force only as to such of said other lines as shall give and receive transfers to and from the lines of said grantees, their successors and assigns, on the basis of a cash redemption by each line of transfers issued by it and used on the other line at the rate of two and one-half cents for ordinary transfers, and one and one-fourth cents for school children transfers, and passengers from any of said other lines which may give and receive transfers on the basis aforesaid to and from the lines of said grantees, their successors

and assigns, presenting a transfer from such other line on which they have paid a fare not less than the fare charged on this line, shall be entitled to passage on the cars of this line to any point within the city limits or to any point on either of the extensions mentioned in Section 13 hereof (when constructed or acquired); any such transfer, however, shall be issued and be good only at or for such an hour and time and at such place as shall render the entire trip of the passenger practically continuous, and no passenger whose ride on any of such other lines begins outside of the city limits shall be entitled to a transfer over this line, and transfers issued by this line shall not be good on any such other lines beyond the city limits; provided further, that said grantees, their successors and assigns, shall not be liable in any event to any passenger or other person beyond their own line, and said grantees, their successors
32 and assigns, may make reasonable rules and regulations not in conflict herewith, respecting the giving and receiving of transfers for the prevention of fraud.

IX.

That the Seattle, Renton & Southern Railway Company operates its said routes and lines under Ordinance No. 15919 containing the following provision regarding the receiving and giving of transfers which is set forth in paragraph 4 of the answer

Transfers.—The payment of a cash fare or the presentation of a ticket shall entitle the passenger to a transfer to any line of any street railway company now operating within the City limits, or that may hereafter operate therein, which shall give and receive transfers to and from all the lines owned, operated or controlled by such company, to and from the lines of grantee, his successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which is issued and on which the transfer is received; but no such transfer shall be good except upon the first connecting car at the point of transfer and upon a car going in the same general direction; and said grantee, his successors and assigns, may make reasonable rules and regulations not in conflict herewith, respecting the giving and receiving of transfers for the prevention of fraud.

X.

That the charter of the City of Seattle, as amended March, 1908, being Section 7 of the city charter of the City of Seattle, page 44 Charter and Ordinances of Seattle, 1908, Revised Edition provides as follows:

"There shall be a superintendent of public utilities. He shall rigidly enforce the provisions of all franchise ordinances, and the rules and regulations of the board of public works relating
33 to his department. * * * At the first meeting of the city council after the first day of April, 1908, the mayor shall

appoint a superintendent of public utilities, whose term of office shall expire December 31, 1909."

That ever since the 18th day of May, 1908, and up to some time in the Fall of 1909, one A. V. Bouillon was the duly appointed, qualified and acting Superintendent of Public Utilities of the City of Seattle; that on said 18th day of May, 1908, and since and while the said A. V. Bouillon was Superintendent of Public Utilities of the City of Seattle as aforesaid, the respondent, Seattle, Renton & Southern Railway Company, repeatedly notified A. V. Bouillon, Superintendent of Public Utilities of the City of Seattle, that if he was ready, willing and anxious to interchange transfers with the Seattle Electric Company upon the basis as set out in said franchise evidenced by Ordinance No. 15949 above set forth; and at the request of said A. V. Bouillon, Superintendent of Public Utilities, said Seattle, Renton & Southern Railway Company notified The Seattle Electric Company, the other respondent herein, operating all of the other lines in the City of Seattle connecting with the lines of the Seattle, Renton & Southern Railway Company, of its willingness and readiness to enter into the interchange of transfers under the terms and conditions set forth in its said contract franchise evidenced of Ordinance No. 15949; that said respondent, Seattle, Renton & Southern Railway Company, is now and has always been ready and willing to comply with the terms and conditions of said Ordinance No. 15949, especially regarding the issuance and receiving of transfers.

XI.

That on the 18th day of September, 1908, the said City of Seattle through the said A. V. Bouillon, as Superintendent of Public Utilities, notied the Respondent, Seattle, Renton & Southern Railway Company, and also the respondent, The Seattle Electric Com-
34 pany, that the said city of Seattle would insist upon the interchange of transfers between the said two companies upon the basis of the contract of the respondent, Seattle, Renton & Southern Railway Company, and that said notification to said two companies was accompanied by a statement showing the local run or route of every car on the said Seattle, Renton & Southern Railway Company lines comparing the same with every local run or route of every car on every line of the Seattle Electric Company, wherever the same intersected; and that the said A. V. Bouillon notified the respondent, The Seattle Electric Company, and the respondent, the Seattle, Renton & Southern Railway Company, that the average percentage of redemption of each of said companies for the interchange of transfers would be 59½ per cent of the fare paid to the Seattle, Renton & Southern Railway Company and 40½ per cent to The Seattle Electric Company. That since the 18th day of September, 1908, the respondent, Seattle, Renton & Southern Railway Company, has extended the local runs or routes of its cars so that in lieu of the detailed statement of said A. V. Bouillon there should be added in one case thirty-eight hundred (3,800) feet and in the other case seventy-one (7,100) feet, and that such addition of said number of feet in

said two runs, being all that the said company operates, increases the average percentage of the fare paid on an interchange of transfers to that the Seattle, Renton & Southern Railway Company would be entitled to not less than an average percentage of 75% and The Seattle Electric Company to not more than an average per cent of 25%.

XII.

That the respondent, The Seattle Electric Company, has always refused and does now refuse to give and receive transfers from any of its said lines in the City of Seattle, to the respondent, Seattle, Renton & Southern Railway Company, upon a division of fare except upon a fifty per cent (50%) division of the amount paid,
35 being five cents and two and one-half cents for school children; it further has always refused and still refuses to interchange transfers from any of its said lines to the lines of the Seattle, Renton & Southern Railway Company upon a four-cent ticket; that the Seattle, Renton & Southern Railway Company has always been ready, willing and anxious to exchange transfers with The Seattle Electric Company as provided by said Ordinance No. 15919 including transfers to be issued as provided therein upon four-cent tickets, and that said Seattle, Renton & Southern Railway Company is obliged by the terms and conditions of its said contract with the city of Seattle to give and receive transfers on the basis as outlined in said transfer provision of Ordinance No. 15919.

XIII.

That in every instance wherever the lines of the Seattle, Renton & Southern Railway Company cross or intersect the lines of The Seattle Electric Company the run or local route of the car belonging to the Seattle, Renton & Southern Railway Company is a great deal longer than the run or local route of the cars of The Seattle Electric Company passing said intersection point; that there is no instance where a passenger riding upon a line of the Seattle, Renton & Southern Railway Company and transferring to any line of The Seattle Electric Company can ride a distance on said car of The Seattle Electric Company on its said run or local route equal to the run or local route of the car of said Seattle, Renton & Southern Railway Company from which said passenger transferred.

XIV.

That said tran-fer provision of Ordinance No. 15919 provides what proportion of the fare paid the said Seattle, Renton & Southern Railway Company and the said The Seattle Electric Company would be entitled to, which is as follows: If a passenger boards a car of the Seattle, Renton & Southern Railway Company and receives a transfer to a car of The Seattle Electric Company, the Seattle, Renton & Southern Railway Company would be compelled to pay
36 to The Seattle Electric Company that proportion of the fare received by said Seattle, Renton & Southern Railway Com-

pany on the run or local route of the car upon which said passenger entered bears to the sums of the run or local route expressed in feet of the said cars of the Seattle, Renton & Southern Railway Company and The Seattle Electric Company. For instance, if the run or local route of the car of the Seattle, Renton & Southern Railway Company upon which the passenger entered was five thousand (5,000) feet in length and the run or local route of the car of The Seattle Electric Company upon which he was transferred was two thousand, five hundred (2,500) feet in length, then in such case the Seattle, Renton & Southern Railway Company would be obliged to pay to The Seattle Electric Company, if such passenger had paid five cents, one-third of said five cents, and could retain two-thirds of said five cents, in case the passenger had paid his transportation by a four-cent ticket, The Seattle, Renton & Southern Railway Company would be obliged to pay The Seattle Electric Company one-third of four cents and could retain two-thirds of four cents.

That said transfer provision in said Ordinance No. 15919 does not contemplate, does not compel and does not mean the Seattle, Renton & Southern Railway Company to divide the fare paid to either company upon which transfer is issued to have its said proportion decreased by the addition of the runs or local routes of cars on different lines of said The Seattle Electric Company upon which said passenger so paying such fare may ride by reason of the giving of transfers on transfers by said The Seattle Electric Company to several different lines of said company, the said Seattle, Renton & Southern Railway Company being only obligated and compelled to take such proportion of the fares as found above and the run or local routes of the car of The Seattle Electric Company upon which the said passenger alights or enters being the only run or local route that enters into the computation on the division of fares between said two companies.

37 XV.

That said transfer provision of said Ordinance No. 15919, provides that the said Seattle, Renton — Railway Company shall only be obliged to give and receive transfers when said car upon which transfers are to be issued is proceeding in the same general direction and also that the car from which a passenger may alight to transfer on to the cars of the Seattle, Renton & Southern Railway Company is proceeding in the same general direction; that said provision does not compel the issuance of transfers at every street intersection but only at those points where the runs or local routes of the cars of The Seattle Electric Company's lines are proceeding in the same general direction, and then only at the northerly limits of the said lines of the Seattle, Renton & Southern Railway Company and vice versa.

XVI.

That prior to the acceptance of Ordinance No. 15919 it was understood and agreed upon by William R. Crawford, the grantee named in said franchise, and the City of Seattle, by its common council,

that an interchange of transfers with the Seattle Electric Company on a basis of a fifty per cent (50%) division of the fares received by either company was not what was intended by said transfer provision in said Ordinance No. 15919; that any division on a fifty per cent (50%) basis of the fares paid or received on an interchange of transfers between the Seattle, Renton & Southern Railway Company and The Seattle Electric Company in the City of Seattle would be far less on the Seattle, Renton & Southern Railway Company than under the basis set forth in said transfer provision of said Section 1 of said Ordinance No. 15919.

XVII.

That since the passage of Ordinance No. 15919 the city limits of the City of Seattle have been extended southerly from said Kenyon Street and that the Seattle, Renton & Southern Railway Company operates within such extended limits on private right-of-way
38 and that no passenger boarding any of the cars of said Seattle, Renton & Southern Railway Company south of Kenyon Street is entitled to receive a transfer from the said Seattle, Renton & Southern Railway Company to any line of The Seattle Electric Company upon any basis of division of the fare paid, and further that no passenger traveling on the lines of the Seattle, Renton & Southern Railway Company south of Kenyon Street is entitled to pay for his passage a transfer received from any line of The Seattle Electric Company for such ride south of Kenyon Street as said transfer provision of Ordinance No. 15919 does not obligate said Seattle, Renton & Southern Railway Company to issue or receive transfers for passage south of said Kenyon Street.

XVIII.

That nearly every passenger desiring to receive a transfer from the Seattle, Renton & Southern Railway Company's cars to the cars of the Seattle Electric Company or from the cars of The Seattle Electric Company to the cars of The Seattle, Renton & Southern Railway company will only travel a very few blocks on The Seattle Electric Company's lines in order to reach the retail districts down town, being a ride not to exceed twelve hundred (1200) feet, whereas the passenger to or from the cars of the Seattle, Renton & Southern Railway Company would ride on the cars of the Seattle, Renton & Southern Railway Company *would ride on the cars of the Seattle, Renton & Southern Railway Company* an average distance of not less than four and one-half miles.

XIX.

That each route or line of the said The Seattle Electric Company is distinct and different under the terms and conditions of its said contract evidenced by Ordinance No. 5874 and it is obliged to operate its cars over each of the said routes as a local run or route of said car; that neither of the respondent companies is obliged to operate its cars over the entire length of said routes or lines but

can shorten the run of said cars to a portion of said route or line, and no passenger has the right to a transfer from one car operated over a portion of the route to another car operated over the entire route, but said passenger must wait for a car operated over the entire route if he desires to ride beyond the run of the car over a portion of said route.

XX.

That the City of Seattle by Ordinance No. 15205 entitled "An Ordinance authorizing Merle J. Wightman and C. E. Muckler, their successors and assigns, to construct, operate and maintain a street railway in the City of Seattle," approved January 11, 1907, Accepted February 5, 1907, page 631 Charter and Ordinances of Seattle, 1908. Revised Edition, in Section 1 thereof, enacted the following transfer provision:

Transfers: The payment of a cash fare or the presentation of a ticket shall entitle the passenger to a transfer to any line of any street railway company now operating within the city limits, or that may hereafter operate therein, which shall give and receive transfers to and from all the lines owned, operated or controlled by such company, to and from the lines of grantees, their successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which the transfer is received bears to the sum of the runs of the local routes of the cars from which the transfer is issued and on which the transfer is received; any such transfer, however, shall be issued and be good only at and for such an hour and time and at such a place as shall render the entire trip of the passenger practically continuous, and no passenger whose ride on any of such other lines begins outside of the City limits shall be entitled to a transfer over this line, and transfers issued by this line shall not be good on any such other lines beyond the City limits; provided further, that said grantees, their successors and assigns, shall not be liable in any event to any passenger or other person beyond their own line, and said grantees, their successors and assigns, may make reasonable rules and regulations not in conflict herewith, respecting the giving and receiving of transfers for the prevention of fraud.

Refused in open court this 2d day of March, 1910.

WILSON R. GAY, *Judge.*

Conclusions of Law.

I.

That under Ordinance No. 15919 the Seattle, Renton & Southern Railway Company upon the payment of a cash fare or the presentation of a ticket shall issue to the passenger a transfer to any line of any street railway operating within the city limits of the City of Seattle, or that may hereafter operate therein, which shall give and

receive transfers to and from the lines owned, operated or controlled by said company, to and from the lines of the Seattle, Renton & Southern Railway Company, its successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which the transfer is issued, bears the sum of the runs or local route of the cars from which the transfer is issued and on which the transfer is received, but no such transfer shall be good except upon the first connecting car at the point of transfer and upon a car going in the same general direction, and the Seattle, Renton & Southern Railway Company, its successors and assigns, may make reasonable rules and regulations not in conflict herewith, respecting the giving and receiving of transfers for the prevention of fraud.

41

II.

That there is no other line of any street railway company now operating within the city limits of the City of Seattle which will give or receive transfers to and from all the lines owned, operated or controlled by said company to and from the lines of the Seattle, Renton & Southern Railway Company on the basis of Settlement as set forth in Conclusion of Law No. I herein.

III.

That the provisions of Ordinance No. 15919 aforesaid relating to transfers as set out in Conclusion of Law No. I herein is not applicable to the lines or routes or any line or route of the Seattle, Renton & Southern Railway Company or owned or operated by it south of the corner common to Sections 25, 26, 34 and 35, Township 24 North, Range 4 East, W. M., known as Kenyon Street in the City of Seattle.

IV.

That the transfer provisions of Ordinance No. 15919, under the terms and conditions of which the respondent, Seattle, Renton & Southern Railway Company is operating its lines or routes, are different and irreconcilable with the transfer provisions of Ordinance No. 5874 of the City of Seattle under which the respondent The Seattle Electric Company, is operating its lines or routes, and each of said ordinances and the provisions thereof are a valid, subsisting agreement and contract between the city of Seattle and the respective companies operating thereunder.

V.

That the court is without jurisdiction or power to enter judgment compelling the Seattle, Renton & Southern Railway Company to issue and receive transfers upon a basis for the division of fares paid as set out in Ordinance No. 5874 under which the said The Seattle Electric Company is operating lines in the City of
42 Seattle or upon any other basis of division except as set out in Ordinance No. 15919, under the terms of which ordi-

nance the Seattle, Renton & Southern Railway Company would be entitled to at least seventy-five per cent (75%) of the fare received upon the redemption of transfers.

VI.

That the alternative writ of mandamus heretofore issued herein be set aside.

VII.

That this action should be dismissed and that the respondent Seattle, Renton & Southern Railway Company, should recover its costs and disbursements herein.

Refused in open court this 2d. day of March, 1910.

WILSON R. GAY, *Judge*.

To the refusal of the court to make Findings of Fact numbered from 1 to 20, both inclusive, proposed and asked for by the respondent, Seattle, Renton & Southern Railway Company, and to the refusal of the court to make each of said findings of Fact, numbered from 1 to 20, both inclusive, proposed and asked for by the respondent, Seattle, Renton & Southern Railway Company excepts, which exception is allowed by the court; and to the refusal of the court to make Conclusions of Law Numbered 1 to 7, both inclusive, asked for by the respondent, Seattle, Renton & Southern Railway Company, and to the refusal of the court to make each of said Conclusions of Law numbered 1 to 7, both inclusive, asked for by the respondent, Seattle, Renton & Southern Railway Company, the respondent, Seattle, Renton & Southern Railway Company excepts, which exception is allowed by the court.

Done in open court this 2d day of March, 1910.

WILSON R. GAY, *Judge*.

43 Due services of within Findings and Conclusions this 3 day of March, 1910, duly admitted.

SCOTT CALHOUN,
H. D. HUGHES,
Attorneys for Relator.

Filed Mar. 2, 1910. D. K. Sickles, Clerk.

44 In the Superior Court of the State of Washington for King County.

No. —.

THE STATE OF WASHINGTON ex Rel. A. G. LINHOFF, Relator,

vs.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and THE SEATTLE ELECTRIC COMPANY, a Corporation, Respondents.

Objections of Respondent Seattle, Renton & Southern Railway Company to Findings of Fact and Conclusions of Law Proposed by the Relator.

I.

Said respondent objects to that portion of proposed finding of fact No. 1 as follows:

"That said corporation at all the times herein mentioned has been and now is engaged in the business of operating a street railway system in the city of Seattle. That said system is composed, in part, of various lines formerly operated by independent companies under separate franchises, which were consolidated in 1900 under one ownership, known as The Seattle Electric Company. That said system is now being operated under that certain franchise ordinance, known as Ordinance No. 5874, entitled "An Ordinance granting to J. D. Lowman and Jacob Furth, their successors and assigns, a franchise to construct, maintain and operate street railways in the City of Seattle." That subsequent thereto said lines have been extended and new lines under additional franchises granted The Seattle Electric Company."

II.

Said respondent objects to that portion of proposed finding of fact No. 2 as follows:

"That said company is the successor and assign of the Rainier Avenue Electric Railway Company, a corporation organized
45 in 1890 under the laws of the State of Washington, and formerly engaged in the operation of a street railway line under Ordinance No. 1141, entitled "An Ordinance granting to S. L. Bowman and his assigns, a franchise to build and operate a street railway within the City of Seattle" approved July 18, 1890, as amended by Ordinance No. 1488. That said Ordinance was later repealed, and that the Seattle, Renton & Southern Railway Company is now engaged in the operation of the same line under that certain franchise passed April 22, 1907, entitled "An Ordinance granting William R. Crawford, his successors and assigns, a franchise to construct, maintain and operate a system of street railways in the City of Seattle," being Ordinance No. 15919. That under said Ordinance said company is engaged in the operation of a line extending from its southern terminus at Orchard Beach to its northern terminus at Blanchard Street."

III.

Said respondent objects to that portion of proposed finding of fact No. 3 as follows:

"and that he may likewise ride from one terminus of the Seattle, Renton & Southern Railway Company line to the other for a single fare. That each system is a single route, over the entire length of which a passenger may ride in any one general direction for a single fare of five cents."

IV.

Said respondent objects to proposed finding of fact No. 4 as follows:

"That the method of the routing of the cars, the names which the separate routes shall bear, the termini of the routes, the territory they shall cover and the length of the run, are all matters solely within the control and determination of the respective companies. That the routing of the car lines operating over the tracks of said companies is an arbitrary matter, controlled solely by the companies, and constantly being changed by them. That frequently old
46 lines are entirely discontinued, new lines put on, and the length and territory of the runs are constantly in process of change. That the rights of the passenger are in no wise dependent upon the routing of the cars, or subject to change by the alteration of said lines. That cars are operated over every part of the system of the two companies, and that a passenger may always ride the entire distance between the two termini of said systems for a single fare.

That where a single line does not operate the entire distance between the two termini, transfers are issued so that a passenger may complete his journey to another terminus. That by means of the system of transfers, a passenger's right of ride is in no wise dependent on the routing of the cars, and that he may always ride the entire distance between the two termini, whether covered by a single route or requiring a transfer from one car to another. That each company will carry a passenger for a five-cent fare from any point within the city limits on its system to any other point on said system within the city limits."

V.

Said respondent objects to that portion of proposed finding of fact No. 5 as follows:

"That any passenger has the right to ride to or from such points to any point in the city limits on the lines of either of said companies for a single five-cent fare. That each of said companies holds forth its system as a single route and offers to carry passengers from each said junction point to any other point on its system in the city limits for a single fare. That from each and every of said transfer points from the Seattle, Renton & Southern Railway line to the Seattle Electric Company's line, could travel further in the same general direction from said point over the lines of the Seattle Electric Company on said transfer, than from the farthest terminus of

said Seattle, Renton & Southern Railway Company's line to said transfer point, and that in each and every case The Seattle
17 Electric Company offers a longer right of ride to and from each said transfer points than the Seattle, Renton & Southern Railway Company. That in each and every case where the lines of the two companies intersect, the length of the Seattle Electric Company's line exceeds the entire length of the Seattle, Renton & Southern Railway Company's line. That in some instances the Seattle Electric Company route its cars over the entire distance between the two termini of its line so intersecting and has done so on others in the past.

That in other cases The Seattle Electric Company divides said line into two or more divisions, and instead of routing a single car over the entire length of said line, will run it over such division thereof, so that a passenger desiring to proceed over the entire length of said line between the two termini, must transfer from one of said cars to the other. But that in each and every case The Seattle Electric Company could at its volition route its cars the entire distance between such termini, and in that event, the length of the run of the Seattle Electric Company's cars, at each and every intersection would exceed the longest possible run of the Seattle, Renton & — Railway Company between its two most distant termini. That the longest possible run of the Seattle, Renton & Southern Railway Company would be from Orchard Beach to Blanchard Street. That the Seattle, Renton & Southern Railway Company has no transfer system and routes some of its cars between said points. That said cars start from the business center of the city and run part way out to Orchard Beach, and are designed for the convenience of the major portion of the residents of the Rainier Valley who live closer in town than Orchard Beach.

VI.

Said respondent objects to that portion of proposed finding of fact No. 6 as follows:

"That in 1907 that franchise was granted the Seattle,
18 Renton & Southern Railway Company, under which it is now operating. That The Seattle Electric Company was the only company in the city at the time the latter franchise was granted. That there are but the two companies aforesaid in the city, and that a passenger can travel between any two points in the city limits served by street-car facilities, by proceeding upon the two routes aforesaid, and that in no event could a passenger use more than two routes, viz: the route of The Seattle Electric Company, and the route of the Seattle, Renton & Southern Railway Company in going between any two points in the city limits opened to street car service, and this on a single fare if transfers were issued between said companies.

VII.

Said respondent objects to that portion of proposed finding of fact No. 7 as follows:

"That the franchise of the Seattle, Renton & Southern Railway

Company makes it the duty of said company to exchange transfers with The Seattle Company upon said basis. That the Seattle Electric Company has made offer in this action to exchange transfers on such basis and that in no event is the Seattle, Renton & Southern Railway Company entitled to more than fifty per cent (50%)."

VIII.

Said respondent objects to proposed finding of fact No. 8 as follows:

"That A. G. Linhoff is a resident of the Rainier Valley district. That he owns property therein and has improved part of the same, and built a home thereon, relying upon the exchange of transfers. That his property is served exclusively by the line of the Seattle, Renton & Southern Railway Company. That it is daily necessary for him in going to and from his work, and for his children in going to and from school to use the lines of both companies. That he is daily compelled to pay a double fare for himself and children
19 over the lines of said companies. That the value of his property has been greatly diminished, and that he is subject to a great and continuing injury by reason of the failure of said companies to exchange transfers. That he has made demand upon each of said companies for the exchange of transfers upon presentation of a five-cent fare or a school children's ticket, which demand has been refused."

Said respondent objects to proposed conclusion of law No. 1 as follows:

"That it is the duty of The Seattle Electric Company and the Seattle, Renton & Southern Railway Company, and each of them, upon presentation of a five-cent fare or school children's ticket, to issue transfers to all lines of said other company, and that it is the further duty of said companies, and each of them, to receive the transfers so issued and to carry the passengers thereon to any point on its lines in the same general direction within the city limits, so that a passenger may travel between any two points in the City limits for a single fare."

II.

Said respondent objects to proposed conclusions of law No. 2 as follows:

"That redemption of the transfers so issued should be made on the basis of one and one-quarter cents (1¼c) for transfers issued on a school children's ticket and two and one-half cents (2½c) for transfers issued on a five-cent fare."

III.

Said respondent objects to proposed conclusion of law No. 3 as follows:

"That the relator has suffered an irreparable and continuing injury, and that he has no clear, adequate or speedy remedy in the

ordinary course of law, and that a writ of mandamus should issue herein compelling the exchange of transfers as prayed."

50 All of which objections are overruled by the court and exceptions are allowed.

Done in open court this 2d day of March, 1910.

WILSON R. GAY, *Judge*.

Due services of within objections this 2 day of March, 1910, duly admitted.

SCOTT CALHOUN.
H. D. HUGHES.
Attorney for ——— .

Filed Mar. 2, 1910. D. K. Sickles, Clerk.

51 In the Superior Court of the State of Washington in and for the County of King.

No. —.

THE STATE OF WASHINGTON ex Rel. A. G. LINDOTT, Relator,

vs.

THE SEATTLE, RENTON AND SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Findings of Fact and Conclusions of Law.

This cause coming on regularly for trial on the 17th day of February, and the relator appearing in person and by his counsel, Scott Calhoun and H. D. Hughes, and the respondents The Seattle Renton and Southern Railway Company, a corporation, and The Seattle Electric Company, a corporation, appearing by their respective counsel, M. B. Sachs and James B. Howe, and evidence having been introduced by the respective parties, and the court being fully advised in the premises, finds as follows:

I.

That the Seattle Electric Company is a corporation organized and existing under the laws of the State of Washington with its principal place of business in the City of Seattle. That said corporation at all the times herein mentioned has been and now is engaged in the business of operating a street railway system in the city of Seattle. That said system is composed, in part, of various lines formerly operated by independent companies under separate franchises, which were consolidated in 1900 under one ownership, known as The Seattle Electric Company. That said system is now being operated under that certain franchise ordinance, known as Ordinance No.

52 5874, entitled "An Ordinance granting to J. D. Lowman and Jacob Furth, their successors and assigns, a franchise to con-

struct, maintain and operate street railways in the City of Seattle." That subsequent thereto said lines have been extended and new lines added under additional franchises granted The Seattle Electric Company.

II.

That the Seattle, Renton and Southern Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business in the city of Seattle. That said company is the successor and assign of the Rainier Avenue Electric Railway Company, a corporation organized in 1890 under the laws of the State of Washington, and formerly engaged in the operation of a street railway line under Ordinance No. 4111, entitled: "An Ordinance granting to S. L. Bowman and his assigns, a franchise to build and operate a street railway within the City of Seattle," approved July 18, 1890, as amended by Ordinance No. 1488. That said ordinance was later repealed, and that The Seattle, Renton and Southern Railway Company is now engaged in the operation of the same line under that certain franchise passed April 22, 1907, entitled "An Ordinance granting to William R. Crawford, his successors and assigns, a franchise to construct, maintain and operate a system of street railways in the City of Seattle," being Ordinance No. 15919. That under said ordinance said company is engaged in the operation of a line extending from its southern terminus at Orchard Beach to its northern terminus at Blanchard Street.

III.

That any passenger has the right to ride for a five-cent fare from one of the termini of the Seattle Electric Company to the other terminus thereof in the same general direction, or to any point intermediate, and that he may likewise ride from one terminus of The Seattle, Renton and Southern Railway line to the other for a single fare. That each system is a single route, over the entire
53 length of which a passenger may ride in any one general direction for a single fare of five cents.

IV.

That the Method of the routing of the cars, the names which the separate routes shall bear, the termini of the routes, the territory they shall cover and the length of the run, are all matters solely within the control and determination of the respective companies. That the routing of the car lines operating over the tracks of said companies is an arbitrary matter, controlled solely by the companies, and constantly being changed by them. That frequently old lines are entirely discontinued; new lines put on, and the length and territory of the runs are constantly in process of change. That the rights of the passenger are in no wise dependent upon the routing of the cars, or subject to change by the alteration of said lines. That cars are operated over every part of the systems of the two companies,

and that a passenger may always ride the entire distance between the two termini of said systems for a single fare.

That where a single line does not operate the entire distance between the two termini, transfers are issued so that a passenger may complete his journey to another terminus. That by means of the system of transfers, a passenger's right of ride is in no wise dependent on the routing of cars, and that he may always ride the entire distance between the two termini, whether covered by a single route or requiring a transfer from one car to another. That each company will carry a passenger for a five-cent fare from any point within the city limits on its system to any other point on said system within the city limits.

V.

That the system of the Seattle, Renton and Southern Railway Company intersects at various points with the Seattle Electric Company's system. That any passenger has the right to ride to or from such points to any point in the city limits on the lines or either of said companies for a single five-cent fare. That each of said companies holds forth its system as a single route and offers to carry passengers from each said junction to any other point on its system in the city limits for a single fare. That from each and every of said junction points a longer right of ride on The Seattle Electric Company's line than on the Seattle, Renton and Southern Railway line. That a passenger, transferring at each and every of said transfer points from the Seattle, Renton and Southern Railway line to the Seattle Electric Company's line, could travel further in the same general direction from said points over the lines of the Seattle Electric Company on said transfer, than from the farthest terminus of said Seattle, Renton and Southern Railway Company's line to said transfer point, and that in each and every case The Seattle Electric Company offers a longer right of ride to and from each of said transfer points than The Seattle, Renton and Southern Railway Company. That in each and every case where the lines of the two companies intersect, the length of The Seattle Electric Company's line exceeds the entire length of The Seattle, Renton and Southern Railway Company's line. That in some instances the Seattle Electric Company routes its cars over the entire distance between the two termini of its line so intersecting and has done so on others in the past.

That in other cases, The Seattle Electric Company divides said line into two or more divisions, and instead of routing a single car over the entire length of said line, will run it over such division thereof, so that a passenger desiring to proceed over the entire length of said line between the two termini, must transfer from one of said cars to the other. But that in each and every case The Seattle Electric Company could at its volition route its cars the entire distance between such termini, and in that event, the length of the run of the Seattle Electric Company's cars, at each and every said intersection would exceed the longest possible run of The Seattle, Renton and Southern Railway Company between its two most distant termini

That the longest possible run of the Seattle, Renton and Southern Railway Company would be from Orchard Beach to Blanch-
55 ard Street. That the Seattle, Renton and Southern Railway Company has no transfer system and routes some of its cars between said points. That it has other shorter car routes running over the same track. That said cars start from the business center of the city and run part way out to Orchard Beach, and are assigned for the convenience of the major portion of the residents of the Rainier Valley who live closer in town than Orchard Beach.

VI.

That the franchise of The Seattle Electric Company was granted in 1900. That in 1907, that franchise was granted the Seattle, Renton and Southern Railway Company, under which it is now operating. That The Seattle Electric Company was the only company in the city at the time the latter franchise was granted. That there are but the two companies aforesaid in the city, and that a passenger can travel between any two points in the city limits served by street-car facilities, by proceeding upon the two routes aforesaid, and that in no event could a passenger use more than two routes, viz., the route of The Seattle Electric Company, and the route of The Seattle, Renton and Southern Railway Company in going between any two points in the city limits opened to street-car service, and this on a single fare if transfers were issued between said companies.

VII.

That the franchise of the Seattle Electric Company makes it the duty of said company to exchange transfers with The Seattle, Renton and Southern Railway Company on a basis of redemption of $2\frac{1}{2}$c for transfers on a 5c fare & $1\frac{1}{4}$ for transfers on school children's tickets. That the franchise of The Seattle, Renton and Southern Railway Company makes it the duty of said company to exchange transfers with The Seattle Electric Company upon said basis. That The Seattle Electric Company has made offer in this action to exchange transfers on such basis, and that in no event is The
56 Seattle Renton and Southern Railway Company entitled to more.

VIII.

That A. G. Linhoff is a resident of the Rainier Valley district. That he owns property therein and has improved part of the same, and built a home thereon, relying upon the exchange of transfers. That his property is served exclusively by the line of the Seattle, Renton and Southern Railway Company. That it is daily necessary for him in going to and from his work, and for his children in going to and from school, to use the lines of both companies. That he is daily compelled to pay a double fare for himself and children over the lines of said companies. That the value of his property has been greatly diminished, and that he is subjected to a great and continuing injury by reason of the failure of said companies to exchange

transfers. That he has made demand upon each of said companies for the exchange of transfers upon presentation of a five-cent fare or school children's ticket, which demand has been refused.

WILSON R. GAY, *Judge.*

Done in open court the 2nd day of March, 1910.

From the foregoing Findings of Fact, the court makes the following conclusions of law:

I.

That it is the duty of The Seattle Electric Company and The Seattle, Renton and Southern Railway Company, and each of them, upon presentation of a five-cent fare or school children's ticket, to issue transfers to all the lines of said other company, and that it is the further duty of said companies, and each of them, to receive the transfers so issued and to carry the passengers thereon to any point on its lines in the same general direction within the city limits, so that a passenger may travel between any two points in the city limits for a single fare.

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II.

That redemption of the transfers so issued should be made on the basis of one and one-quarter cents (1¼c) for transfers issued on a school children's ticket and two and one-half cents (2½c) for transfers issued on a five-cent fare.

III.

That the relator has suffered an irreparable and continuing injury, and that he has no clear, adequate or speedy remedy in the ordinary course of law, and that a writ of mandamus should issue herein compelling the exchange of transfers as prayed.

Dated M'ch 1st, 1910, in open court.

WILSON R. GAY, *Judge.*

Service accepted Feb. 25, 1910

J. B. HOWE.
Att'y for S. E. Co.

Filed Mar. 2, 1910. D. K. Sickles, Clerk.

In the Superior Court of the State of Washington in and for the State of King

No.

STATE OF WASHINGTON on the Relation of [illegible] Relator

vs.

THE SEATTLE RAILWAY COMPANY, a [illegible] Corporation, Respondent.

Writ of Mandate

The State of Washington to [illegible]

Whereas, The Court [illegible]

and

Whereas, It appears [illegible]

Electric Company, a corporation and The Seattle Municipal Railway Company, a corporation [illegible]

[illegible]

[illegible]

[

March, 1910.

WILSON R. GAY,

MORRIS R. SACHS.

61 In the Superior Court of the State of Washington for Ki County.

No. 71874.

THE STATE OF WASHINGTON ex Rel. A. G. LINHOFF, Relator,
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and The Seattle Electric Company, a Corporation, Respondents.

Appeal and Supersedeas Bond.

Know all men by these presents: That the Seattle, Renton & Southern Railway Company, a corporation duly organized and doing business under the laws of the State of Washington, as principal, and National Surety Company, as surety, are held and firmly bound unto the State of Washington, ex rel. A. G. Linhoff, its successors and assigns, in the sum of ten thousand, two hundred dollars ($10,200.00) for the payment of which, well and truly to be made, we bind ourselves, our and each of our successors and assigns. Sealed with our seals and dated this 9th day of March, 1910.

The condition of the obligation is such that

Whereas, the above named bounden, Seattle, Renton & Southern Railway Company, has appealed to The Supreme Court of the State of Washington from that certain judgment, and the whole thereof, made and entered in the above entitled court in the above entitled cause on the 2d day of March, 1910, and which judgment was in favor of the relator and against the respondent, Seattle, Renton & Southern Railway Company.

Now therefore, if the above named bounden, Seattle, Renton & Southern Railway Company, the appellant, will pay all costs and damages that may be awarded against it on the appeal or on the dismissal thereof, not exceeding two hundred dollars ($200.00), and will satisfy and perform the judgment appealed from in case it shall be affirmed and any judgment or order which the Supreme Court may render or make, or order to be rendered or made by the
62 Superior Court herein, then this obligation to be void, otherwise to remain in full force and virtue.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY,
By W. R. CRAWFORD, *President*.
NATIONAL SURETY COMPANY,
By JOHN W. ROBERTS,
Resident Vice President.

Attest:

GEO. W. ALLEN,
Resident Ass't Secretary.

[CORPORATE SEAL.]

Filed Mar. 12, 1910. D. K. Sickles, Clerk.

63 STATE OF WASHINGTON,
County of King, ss:

I, D. K. Sickles, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of King, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in Cause No. 71874, State of Washington, on the relation of A. G. Linhoff vs. The Seattle, Renton & Southern Railway Company, a corporation, and The Seattle Electric Company, a corporation, as I have been directed by Appellant to transmit to the Supreme Court of the State of Washington on appeal together with the original statement of Facts hereto attached.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 1st day of Sept. A. D. 1910.

[SUPERIOR COURT SEAL.]

D. K. SICKLES, *Clerk*
By G. A. GRANT,
Deputy Clerk.

64 9058. No. 71874. Superior Court, King County, State of Washington. State of Washington, Relator, vs. The Seattle, Renton & Southern Railway Co., a corporation, et al., Respondents. Filed Sep. 10, 1910. C. S. Reinhart, Clerk. 71874. Filed April 1, 1910. D. K. Sickles, Clerk.

65 No. 71874.

STATE OF WASHINGTON
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY Co., a Corporation, et al.

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67 In the Superior Court of the State of Washington for King County.

No. 71871.

STATE OF WASHINGTON on the Relation of A. G. LINDOFF, Relator,
vs.
THE SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, and THE SEATTLE ELECTRIC COMPANY, a Corporation, Respondents.

Be it remembered, that this cause came regularly on for trial in open court, at a regular term of this court on February 17, 1910, at seven o'clock p. m., before the Hon. Wilson R. Gay, one of the judges of said court, in Department No. 5.

The relator appearing by his attorney and counsel, Mr. H. D. Hughes, Assistant Corporation Counsel of the City of Seattle.

The respondent Seattle, Renton & Southern Railway Company, a corporation, appearing by Mr. M. B. Sachs, and the respondent, The Seattle Electric Company, a corporation, appearing by Mr. A. B. Howe.

Thereupon, proceedings were had and testimony offered in said cause as follows; to-wit:

68 J. W. McCLOY, produced as a witness on behalf of the Relator, having been first duly sworn, testified as follows:

(Mr. HUGHES:)

Q. Mr. McCloy, you are one of the members of the Superintendent of the Public Utilities Department of the City of Seattle, are you not?

A. I am.

Q. I understand that you have charge of that department which is vested with the inspection of the street railway system in this city, and with jurisdiction over all municipal questions that arise relating to the municipal street railways operating within the city limits?

A. Yes, I am car service and equipment inspector.

Q. Your official position is entitled "Car Service and Equipment Inspector?"

A. Car Service and Equipment Inspector.

Q. You have prepared a map, have you not, showing the street car system of the Seattle Electric Company as it exists at the present time within the city limits?

A. It was prepared at my direction.

Q. Under your direction?

A. Yes sir.

Q. Is this the map (showing map to witness)?

A. Yes sir.

Q. This map which I hold here, you say was prepared under your supervision and direction?

A. Yes sir.

Mr. Hughes: I ask that it be marked for identification at this time, Your Honor.

Map referred to was marked plaintiff's exhibit "A" for identification.

69 (Mr. Hughes:)

Q. I understand, Mr. McCloy, that this map referred to as plaintiff's exhibit "A," shows the ——

The Court: Now, here let's shorten this. There are a lot of things that you two gentlemen can agree upon. What is the use asking these questions?

Mr. Hughes: These are matters we can't agree upon, I think.

The Court: Are they?

Mr. Hughes: Yes.

The Court: All right.

Mr. Sachs: What is it you want to show by this, that these maps show the Seattle Electric Company's lines?

Mr. Hughes: Well, I prefer to bring it out in this way.

Mr. Sachs: All right.

The Court: Very well.

(Mr. Hughes:)

Q. This map, plaintiff's exhibit "A", refers to the street car system owned and operated by the Seattle Electric Company, under various franchises granted to it by the city of Seattle, does it not?

A. Yes sir.

Q. Now, just explain to the court the various franchises under which this street car system is owned, as shown upon plaintiff's exhibit "A"?

A. Will it be necessary to go over this whole——

Q. (Interrupting:) No, not at this time. Just I refer now to the blanket franchise and the other franchises under which the company operates.

A. The lines indicated in black are those covered by the blanket franchise, 5874.

Q. When was that granted?

70 A. Granted to the Seattle Electric Company in 1900, I believe—known as the blanket franchise.

Q. What was the effect of that franchise?

A. It consolidated some four or five independent systems which had been operating prior to that time.

Q. Operating under separate franchises?

A. Under separate franchises.

Q. I understand, then, that all the lines shown in black upon that map constitute the railroads, formerly independent street railways, which were consolidated under the blanket franchise?

A. Yes sir.

Q. Subsequent to the period when the blanket franchise was

granted, other street car franchises have been granted to the Seattle Electric Company, have they not?

A. Yes sir.

Q. Have you indicated said subsequent and additional lines upon that map?

A. Yes sir, they are indicated in red. In each case the franchise ordinance number is given.

Q. I understand, then, that all the lines shown in red were not granted under one franchise?

A. No, they were granted under a good many franchises.

Q. Under separate franchises?

A. Separate franchises.

Q. Some of those franchises were extensions of the old lines operating under the blanket franchise?

A. Yes sir.

Q. And others were new and independent lines?

A. Yes sir.

71 Q. Those new and independent lines were put into operation under separate and individual franchises?

A. Yes sir.

Q. Which the Seattle Electric Company acquired after bidding for them?

A. Yes sir.

Q. The franchises under which each of these lines is being operated, independent now of the blanket franchise lines, are operated under independent franchises, then?

A. Yes sir.

Q. The numbers of which are shown upon that map?

A. Yes sir.

The COURT: Your map, plaintiff's exhibit number "A".

Mr. HUGHES: Plaintiff's exhibit "A".

(Mr. HUGHES:)

Q. The line in green, what does that show?

A. Shows the route of the Seattle, Renton & Southern Railway Company.

Q. You can identify that map as being correct, can you?

A. Yes sir.

Mr. HUGHES: I now offer it in evidence.

The COURT: It will be admitted.

Mr. SACHS: One moment, if the court please.

The COURT: Any objection, judge?

Mr. SACHS: No, I just want to ask a question:

By Mr. SACHS:

Q. In certain instances in which extensions were granted to build, that is, certain franchises were granted to build certain extensions, you haven't shown the original route and then the extension separately, have you?

72 A. We have shown the original route in black, as in this case (indicating), and the extension in red.

Q. But the original route in black and the extension in red all constitute one route now?
A. Yes.

Mr. HUGHES: Yes; I was just going to get to that, judge.

(Mr. SACHS:)

Q. And the green line which you show represents the Seattle, Renton & Southern Railway Company franchise. How far is that continued south?

A. The franchise goes as far as Kenyon Street; beyond that it is a county franchise, outside of the jurisdiction of the city.

Q. That is to a point common to certain sections, known as Holly Street, at Orchard Beach, or Kenyon Street?

A. Kenyon Street.

Q. Kenyon Street at Orchard Beach?

A. Yes sir.

The COURT: That shows on the franchise, or on the map, does it, just as far as it goes, right across there, it is marked, is it?

A. Yes, it is marked under the franchise 15919.

The COURT: Yes, I understand.

By Mr. HUGHES:

Q. In each case where one of the old blanket franchise routes shows upon plaintiff's exhibit "A"——

Mr. HUGHES: This is now in evidence, is it, as "A"?

The COURT: Yes.

Map referred to was marked plaintiff's exhibit "A".

(Mr. HUGHES, continuing:)

Q. —— shown upon plaintiff's exhibit "A", was subsequently extended, you have shown that extension in red, and shown the franchise ordinance under which it was granted, by number——

A. (Interrupting.) Yes.

Q. (Continuing:) ——thereunder. And in the same way where new lines have been granted by subsequent franchise, you have also shown those in red and the franchise number underneath?

A. Yes sir.

Q. Over this network system now owned and operated by the Seattle Electric Company, certain lines of street railway are now being operated, are they not?

A. Yes sir.

Q. Describe to the court the number and names of those routes, indicating, generally, the methods in which they travel?

A. Shall I take all of them as I have them here?

Q. Have you a table there?

A. I have a table here.

Q. Just state generally what that table shows?

A. It shows the route of each line, together with the portion or portions of the separate franchises over which they may operate. Some of them operate over a half a dozen different franchises.

Q. Well, when you say a car line, what do you mean, do you mean the actual existing street car line as they run at the present time with the names of the line on the cars and running between certain termini?

A. Yes sir.

74 Q. When you refer to the street car line, you refer to the street car track covered by cars running between certain termini, back and forth?

A. Yes sir.

Q. That you call a street car line?

A. That is a street car line.

Q. And by that you mean the actual run upon which certain cars are placed?

A. Yes sir.

Q. And over which territory they travel continuously?

A. Yes sir.

The COURT: Now, submit those papers to Judge Sachs—just submit them to him and he probably will concede that.

(Papers were handed to Judge Sachs by witness.)

(Mr. HUGHES:)

Q. How many street car line routes does the Seattle Electric Company operate?

A. I don't know, offhand. There is a paper for each one of them there. Something like thirty, I believe.

Q. Thirty routes?

A. I would not say for sure, but it is in that neighborhood.

Q. Now, those separate car lines, do they each of them operate under a separate franchise?

A. Not necessarily—they operate—may operate under several different franchises.

Q. Well, what is the fact as to each of these car lines in active service at the present time operating over more than one franchise route?

A. Well, the company gets authority to lay tracks in certain portions of the city. They are not bound by any requirement

75 to route the cars over those tracks in any particular way, they can route them to suit themselves, and at times past they have changed the routing on a number of occasions.

Q. Let me understand you: When a franchise is granted, it may specify a certain number of routes, calling them route number two, number three, number four, number 5, etc.?

A. Yes sir.

Q. What is set forth in that route is the right to lay a track over a certain portion of a street or streets?

A. And operate cars over it, yes sir.

Q. That will be called a route, that will be called route number one, or given a certain number in the franchise—is that correct?

A. Yes; that is merely technical.

Q. These car lines that are in actual operation, don't each of them run over any specific numbered route under any franchise?

A. They are not obliged to.

Q. As they are actually operated, do they cover more than one franchise numbered route?

A. Very frequently, yes sir.

Q. Do they in every case?

A. Not in every case.

Q. Not in every case?

A. No. The Madison Street line covers one franchise route. I will take that back. The Yesler line does. The Madison cable is divided at the power house; there is one route between the city and the power house and one between the power house and the lake, but the Yesler line operates one route its entire distance.

Q. I see.

Mr. Hughes: Have you any objection to that?

Mr. Sachs: No.

Mr. Hughes: That simply shows the different routes.

The Court: It may be marked as part of the evidence in the case, ist marked as part of the evidence of this witness.

Mr. Sachs: It can be copied in the record?

The Court: Yes, and become a part of the record showing the evi- nce of this witness respecting the different routes of the Seattle lectric Company and, I suppose—does it include the Renton Com- any too?

A. No, the Renton Company is not in.

The Court: Just the Seattle Electric Company's different routes.

A. That should be as of the present time, because they may nange certain of those routes in the next few days.

The Court: I understand, but it is that way tonight?

A. Yes.

The Court: Of course this is only record. Almost all of this is thin the common knowledge of the court—

Mr. Sachs: I think the best way to do—

The Court (continuing): —of the presiding judge. I think I ow something about the situation here, but, in order to have the ord complete, let this be the evidence.

Mr. Sachs: That could be marked, I think, and save a good deal of record—marked as an exhibit, accompanying this witness's testimony.

The Court: Very well.

Mr. Hughes: Very well, let it be marked plaintiff's exhibit "B."

The Court: It will be exhibit "B."

Paper referred to was marked plaintiff's exhibit "B."

(Mr. Hughes:)

Q. Now, you say there are approximately thirty car lines operat- in the city, owned by the Seattle Electric Company?

A. Approximately.

The Court: Car line routes.

Q. Car line routes. Those car line routes operate under various franchises, in many instances?

A. Yes sir.

Q. They cover tracks that were laid under various different franchises?

A. Yes sir.

Q. Are those routes continuous throughout the past ten years since the granting of the blanket franchise, or have they been frequently changed?

A. They have been frequently changed.

Q. What you are giving now are the present existing car lines?

A. The present existing car line routes.

Q. How are those routes determined?

A. At the discretion of the management of the company, to serve the best interests of the traveling public.

78 Q. They then route their cars between such points as they deem best to fit their needs and the needs of the public —

A. (Interrupting.) Yes.

Q. (Continuing:) —and accommodate the public. That would be in the same manner, then, as if all of this network system was covered by one franchise?

A. Yes sir.

Q. You further prepared a map here showing the lines of the Seattle Electric Company and the Seattle, Renton & Southern Railway Company on a different basis, did you not?

A. That was not prepared under my supervision, but it is substantially correct; I have checked it.

Q. You have checked it over?

A. Yes.

Q. Is this that map?

Q. Yes sir.

Q. This first one (showing map to witness)?

A. Yes.

Q. The map to which I now refer you say has been checked by you and found to be substantially correct?

A. Yes sir.

The COURT: Mark that.

Mr. HUGHES: I offer that in evidence for identification.

The COURT: For identification, as exhibit "C," so that we can have it always referred to, refer to it hereafter as an exhibit.

Map referred to was marked plaintiff's exhibit "C" for identification.

79 (Mr. HUGHES:)

Q. This map, as I understand it, shows the line of the Seattle, Renton & Southern Railway Company and the lines of the Seattle Electric Company that intersect with the same?

A. Some lines—some of the principal lines of the Seattle Electric Company that intersect with it; not all of them, however.

Q. The line in blue, marked blue on plaintiff's exhibit "C," is the Seattle, Renton & Southern Railway Company line?

A. Yes sir.

Q. What are the lines which you have marked in red on the map?

A. Those are intersecting lines of the Seattle Electric Company, a few of the longest intersecting lines of the Seattle Electric Company, showing the longest route that could be traveled by a passenger transferring from the Seattle, Renton & Southern Railway.

Q. That shows each intersection of the Seattle, Renton & Southern Railway with the Seattle Electric Company's lines so far as material to this action?

A. That is substantially correct, again because they are operating over temporary permits.

Q. I referred to their franchise lines?

A. Yes, their franchise lines.

Q. State whether or not at each of the points where the line of the Seattle, Renton & Southern Railway Company intersects with the line or any of the lines of the Seattle Electric Company, whether or not a passenger at such transfer point would have a longer
80 right of ride on the lines of the Seattle Electric Company or on the line of the Seattle, Renton & Southern Railway Company?

Mr. Sachs: We object to that, if the court please, as irrelevant, incompetent and immaterial; it don't make any difference about that.

Mr. Hughes: Well, that is, of course, to be passed upon by the court subsequently.

The Court: Probably don't, but I shall overrule the objection. I want to ask a question, however, for the court's information, on that map:

(The Court:)

Q. Turning to the map, what do you mean—the blue line, does that extend clear around Lake Union, as being a franchise?

A. That is a green line, Your Honor.

(The Court:)

Q. Oh, that is a green line?

A. Yes.

(The Court:)

Q. Oh, I see. Well, it is dark, you know, and my eyes did not catch it. I see.

A. It extends only, however, to the city limits; we haven't extended it beyond that point.

(Mr. Hughes:)

Q. To Orchard Beach, you mean?

A. To Orchard Beach—Kenyon Street.

Q. Now, answer my question with respect to the respective rights of rides at each intersecting point?

A. At each intersecting point the passenger would be able to ride further over the lines of the Seattle Electric Company if he was allowed his full rights as a passenger going from one point to another in the same general direction.

Mr. SACHS: The court will understand the same objection
81 goes to all of this.

The COURT: Yes, I understand. The objection will be overruled.

(Mr. HUGHES:)

Q. This he would not be able to do by riding upon a single car of the Seattle Electric Company?

A. No sir, he would have to transfer from one car to another, in many cases.

Q. In many cases. Now, taking the first intersection at the top of the map and referring to the table which you have prepared, state to the court the distance which a passenger getting off the Seattle, Renton & Southern Railway at such point would have a right to ride on the lines of the Seattle Electric Company ——

A. Well, take as a first——

Q. (Continuing:)——on payment of a five-cent fare, or, if transfers are issued, upon presentation of a transfer?

A. I will take as the first intersecting point, Twelfth and Washington.

Q. Yes.

A. Twelfth Avenue South and Washington Street; a passenger could then ride on the Main Street line of the Seattle Electric Company to its intersection with the Madrona Park line at Twelfth Avenue and Jefferson Street; thence on the line of the Madrona Park—the route of the Madrona Park line along Broadway to Prospect Street; thence——

Q. Well, it is not necessary to refer to the routes, just determine the point.

Mr. SACHS: Let him do that.

Mr. HUGHES: All right.

A. (Continuing:) Thence on the line of the Broadway and
82 Pike—the car of the Broadway and Pike line to Eastlake Avenue and Harvard Avenue; thence on the route of the car of the Eastlake line to Forty-fifth and Wallingford; thence on the car of the Wallingford line to Forty-fifth and Meridian; thence over the Meridian line to its terminus at North Sixty-fifth and Latona Avenue, I believe.

Q. What is the distance which he would ride in that event?

A. The distance is approximately thirty-eight thousand four hundred feet on the lines of the Seattle Electric Company, and ——

Q. (Interrupting.) How far could he ride if he rode to the furthest limit of the Seattle, Renton & Southern Railway Company line in its franchise—under its city franchise?

A. Thirty-four thousand nine hundred feet.

Q. Give the comparative percentages?

A. I have not figured that one out, Mr. Hughes.

Q. Well, figure it out.

A. (Witness figures.) The percentage of the Seattle, Renton & Southern Railway Company would be approximately forty-eight per cent, and the Seattle Electric Company fifty-two per cent.

Q. Now, have you prepared statements showing the distance at each intersecting point which a passenger could ride from such point on the lines of the Seattle Electric Company, as compared to the distance which he could ride from such point on the lines of the Seattle, Renton & Southern Railway Company?

A. Yes, I have prepared such a statement, roughly.

Q. Is that in such shape that it can be introduced in evi-
83 dence?

A. I am afraid not. It is pretty badly scratched up.

Q. Well then, I will have to ask you to take each intersecting point and read to the stenographer the comparative distances and percentages at such point of the right of ride from such intersecting point upon the lines of each respective company?

The COURT: Now, let's see, how many other intersecting points are there? There is the one you have spoken of, and then the one down town.

Mr. HUGHES: There are several down town, at Second and Third and First, and then at Union and Pike.

Mr. SACHS: If your honor please, this testimony of this witness develops the fact that these proposed transfers are transfers upon a transfer from one different line to another. Now there is nothing in the ordinance of the Seattle, Renton & Southern Railway Company——

The COURT (interrupting): Well, I don't know whether in this trial I have the right to take judicial notice of the ordinance or not, but I am going to commence by doing it.

Mr. HUGHES: It is before the court.

Mr. SACHS: It is pleaded.

The COURT: It is pleaded before the court, but I think I am familiar with the ordinance, and I think the ordinance provides for a transfer upon a transfer.

Mr. SACHS: No, your honor, there is nothing mentioned there in the ordinance —

The COURT (interrupting): Well, that is my recollection of it, and I know it is a common practice.

84 Mr. HUGHES: I think that is a point which can be——

Mr. SACHS (interrupting): That may be the common practice——

The COURT (interrupting): We will get to that a little later. I will hear the evidence, judge, and then I will hear you on that, because I am of the opinion that that is the way the ordinance reads.

Mr. SACHS: The Ordinance of the Seattle, Renton & Southern Railway Company?

The COURT: No, I am talking about the ordinance of the Seattle Electric Company.

Mr. SACHS: Well, that may be, as far as their ordinance is concerned.

The COURT: Yes, the ordinance of the Seattle Electric Company.

Mr. SACHS: But, at the outset of this case, if the court please, it is pleaded in the answer of the respondent, the Seattle, Renton & Southern Railway Company—the transfer provision in its contract

or in the ordinance under which it is operating. Now, that is a very short clause, and in order to have that before the court in hearing this testimony, with the court's permission I will read it to the court so that the court can have it.

The COURT: Proceed.

Mr. SAGUS: In section four of said ordinance number 15,919, it is provided as follows:

"Transfers. The payment of a cash fare or the presentation of a ticket shall entitle the passenger to a transfer to any line of any street railway company now operating within the city limits, or that may hereafter operate therein, which shall give and receive transfers to and from all the lines owned, operated or controlled by such company, to and from the lines of grantee, his successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received; but no such transfer shall be good except upon the first connecting car at the point of transfer and upon a car going in the same general direction; and said grantee, his successors and assigns, may make reasonable rules and regulations not in conflict therewith, respecting the giving and receiving of transfers for the prevention of fraud."

The COURT: Very well. Now, what difference would it make to the Seattle and Renton people should the Seattle Electric Company have to give a subsequent transfer? That is to say, supposing that they start out, we will say, at First Avenue and Washington Street, which is a fair illustration, because it comes within our common knowledge, and the transfer would be given first from that street to First Avenue; now, we will say from First Avenue, if the Seattle Electric Company should have to give a second transfer from Madison Street out, we will say clear to the lake, or, if you want to be more complicated, let it go out over Madison Street up to Third avenue and from Third Avenue to an Eastlake car or a Capital Hill car, it makes no difference, what complaint could the Seattle, Renton & Southern Railway Company have to make in the matter if they only had to account for the one deal, that is, the deal from their company to the Seattle Electric Company?

Mr. SAGUS: They would not——

The COURT: (interrupting): I am just asking you.

Mr. SAGUS: They would not, your Honor, if there was only one route under their contract.

The COURT: Well, I will let Mr. Hughes proceed, and I will see about it later.

Mr. HUGHES: Well, let me shorten up this testimony by asking——

The COURT: (interrupting): Shorten it all up and get through with this.

Mr. HUGHES (continuing): ——the general question.

Mr. HUGHES:

Q. Taking each intersection point where the line of the Seattle

enton & Southern Railway Company crosses any of the tracks
f the Seattle Electric Company, would a passenger getting off the
ne of the Seattle, Renton & Southern Railway Company at each
d all of those intersecting points have a right to proceed upon the
es of the Seattle Electric Company, whether upon a single car
by means of transfers, a greater distance than he could proceed
om such point upon the line of the Seattle, Renton & Southern
ailway Company to its franchise terminus, namely, Orchard
Beach?

A. Yes.

Mr. Sachs: Of course the court will understand the same objection
es to this.

The Court: Yes, the same objection.

Mr. Sachs: And an exception will be allowed.

(Mr. Hughes:)

Q. So that if the basis of settlement was the number of miles
ich a passenger has the right to ride from any transfer point,
Seattle Electric Company would offer a greater length of ride
on each of said points,——

A. (Interrupting:) Yes sir.

Q. (Continuing:) —— than the Seattle, Renton & Southern Rail-
y Company?

A. Yes sir.

Q. This map shows each of these intersecting points and certain
the long rides which he could take?

A. Yes sir.

Q. The long rides I understand are shown in red?

A. In red and green connection—well, in red, the long lines in

Q. What are the green lines upon the map?

A. Those are routes of the Seattle Electric Company over which
could be routed, if the company chose, from one end of the
to the other, over their franchise, and on which the passenger
ld ride on the payment of a five-cent fare. The company has
en to divide those lines at certain points, but, if they should
, they could run cars from one end of the city to the other; in
fact they have done so at times in the past, they run the
Fauntleroy cars through to Fort Lawton, as an example.

Q. In other words, from the end of this red line, which I
marked "A"——

(Interrupting:) No, no, down here. Well, they could run
"A", yes.

(Continuing:) —from "A" to "B" (marking), in plaintiffs'
bit "C"?

Yes.

In each of these cases, then, where the track of the Seattle
tric Company intersects the track of the Seattle, Renton &
hern Railway Company, you have marked the termini of that
in green and in red?

Of certain tracks, yes.

Q. So that at each intersection you have taken a far point to the north, from which he could start and along which he could travel, crossing the line of the Seattle, Renton & Southern Railway Company and proceeding southerly to the southern termini of that track?

A. Yes sir.

Q. The total distance, then, over which a passenger could travel on the line of the Seattle Electric Company, upon payment of a single fare, is known by the combination at each intersection point of the line marked in green on the one side, plus the line marked in red upon the other?

A. Yes sir.

(The COURT:)

Q. And the number of feet or distance is shown on the map?

A. No sir.

Mr. HUGHES: I was just going to ask him a general question in regard to that.

89 (Mr. HUGHES:)

Q. Now in each and every case where the line of the Seattle Electric Company intersects the line of the Seattle, Renton & Southern Railway Company, what is the condition as to the length of the combination of the lines marked in green and red, as compared to the total franchise length of the Seattle, Renton & Southern Railway marked in blue upon plaintiff's exhibit "C"?

A. It is largely in favor of the Seattle Electric Company.

Q. Make that more explicit. What do you mean by that, what is the comparative length?

A. A passenger can travel considerably further, in some cases more than twice as far, on the route of the Seattle Electric Company as he could on the line of the Seattle, Renton & Southern Railway Company.

Q. In many instances that would involve, however, transferring from one car to another?

A. Yes sir.

Q. Under the present system of routing?

A. Yes sir.

Q. Do you testify, then, that at each and every intersecting point there is a continuous ride which a passenger can take, whereunder he crosses at such intersecting point, which ride and which length of track between the two termini over which he has the right to ride is longer than the entire length of track of the Seattle, Renton & Southern Railway Company?

A. Yes sir.

Q. That is true in each and every case?

A. It is under the present method of routing, yes sir.

Q. Well, that is true of the tracks as laid at present under

90 the franchise?

A. Yes sir.

Q. The length of track is correct?

A. Yes, regardless of the routing of the cars.

Q. At the present time the Seattle, Renton & Southern Railway Company routes a certain line of its cars from Orchard Beach, its southern terminus, to Blanchard Street, its northern terminus, does it not?

A. No, they are not going to Blanchard Street, never have gone to Blanchard Street.

Q. Well, to Pike, then; that is as far as it is constructed at the present time?

A. Yes, sir.

Q. To Pike?

A. They operate that by transfer; no through cars have been run as far as Pike Street.

Q. Have they any system of transfer?

Mr. SACHS: No transfers are issued.

A. No transfers are issued. It is what they call the bodily transfer, they get the right to step on another car and go up as far as Pike Street. It is just the same as though they had the car running right straight through. The only reason they haven't run the cars all the way through is because they haven't facilities at Pike Street to turn the cars around.

Mr. SACHS: Because the city has not granted the street privilege under the franchise.

(Mr. HUGHES:)

Q. What are the two furtherest termini of the Seattle, Renton & Southern Railway Company?

Mr. CRAWFORD: For transfers?

901½ Mr. HUGHES: No as far as laying track goes under the franchise?

A. At present——

(The COURT:)

Q. Commence down there the other side of Hillman; how far north do they run?

A. At present they are only going as far as First and Washington, but when Fourth Avenue is cleared at Yesler Way, they will go as far as Pike Street, and within a very few weeks they will probably be going further, as far as Virginia Street.

(Mr. HUGHES:)

Q. What is the northern terminus of their franchise right?

A. Blanshard Street, I belive.

(The COURT:)

Q. Where is Blanchard Street? Just describe it so that we will have the record straight. Where is Blanchard Street as compared with, say, Pike Street, how many blocks from it?

A. Five blocks.

(The COURT:)

Q. North—which, north of Pike?

A. Of Pike, at Fourth Avenue.

Q. The longest car line route, then, that could be operated over the line of the Seattle, Renton & Southern Railway Company under its city franchise would be a route running from Orchard Beach to Blanchard Street?

A. Yes sir.

Q. Now assuming that the Seattle Electric Company, to avoid causing transfers from one car to another along the green and red lines shown on the map, should route its car between these two termini as a continuous run, I understand then that the route of the cars of the Seattle Electric Company at each inter-section
91 point would be greater than the longest possible route on the Seattle, Renton & Southern Railway?

A. The sentence is not exactly clear.

Q. Well, instead of requiring when the passenger arrives at one of the terminus of the network system of the Seattle Electric Company to the north, say, and desired to proceed southerly to the one to be would cross the line of the Seattle Electric Company would that be?

A. The Seattle, Renton & Southern.

Q. The Seattle, Renton & Southern?

A. Yes sir.

Q. In order to proceed to the southern terminus under present conditions he would have to transfer to another car line of the Seattle Electric Company?

A. Yes sir.

Q. The tracks, however, being connected?

A. Yes sir.

Q. You have stated that the company could route a car line between these two termini?

A. Yes sir.

Q. Instead of requiring him to transfer?

A. Yes sir.

Q. If the routes were so made so as to run in each case between the two termini, the routes of the Seattle Electric Company coming with the route of the Seattle, Renton & Southern Railway Company would in each case be longer than that of the Seattle, Renton & Southern Railway Company between its two furthest termini.

A. Certain routes of the Seattle Electric Company would be longer than those shown on this map, for instance—

Q. Yes. Those shown on the map?

A. Yes sir.

Mr. Sachs.)

Q. Have you a map showing the shorter ones?

A. No sir.

Mr. Sachs. No.

Mr. Hughes.)

Q. I am referring now to the two furthest termini.

A. Yes sir.

Q. You mean taking Madison Street or James Street, a passenger getting off at Fourth Avenue could transfer on Madison Street down to Second or First and then from there proceed on out northward to Fauntleroy Park—or Ballard Beach, or some of those lines?

94

A. Yes sir.

Q. And those lines are each longer than the line of the Seattle, Renton & Southern Railway Company?

A. Yes sir.

The COURT: Well now, we will have no mistake about this matter. This second map that is upon the board, that has been referred to, will be regarded in evidence as plaintiff's exhibit "C."

Map referred to was marked plaintiff's exhibit "C."

Mr. HUGHES: I think that is all.

The WITNESS: As I said, Your Honor, this map was gotten up and I simply checked it. There are certain errors in it, however, which are inconsequential and which I would not want to have to be responsible for later on. I noticed as I went over it in a hurry, that certain routes come down over the franchise and not where they are actually running now, but that makes very little difference; for instance, the Ballard Beach route is shown as coming in over Western Avenue, whereas it comes in over First Avenue, but the distance is approximately the same.

(The COURT:)

Q. Well, you can make that kind of an explanation so that there will be no question about your testimony hereafter, not—impeachable testimony. You may make any other statement in there of that.

95

A. There are several discrepancies in the map, quite a number. This was gotten up very hastily and I have been very much rushed in preparing this whole testimony, and I was not able to prepare the map of this sort that I wanted to. The other map is correct.

(The COURT:)

Q. Which exhibit?

A. Exhibit "A." But this one, I don't want to be held responsible for it if any slight discrepancies are found, but, substantially, it serves the purpose, showing what we wanted to bring forth tonight.

The COURT: Was there another map you wanted?

Mr. HUGHES: I think that is all. The other maps are similar to this.

Cross-examination:

(Mr. SACHS:)

Q. Mr. McCloy, as I understand it you figured, under the franchise there, no transfer beyond Orchard Beach?

A. No transfer beyond Orchard Beach.

(The COURT:)

Q. That is, south?
A. South of Orchard Beach.

(Mr. SACHS:)

Q. South of Orchard Beach?
A. Well, that is outside of the city limits, we have no jurisdiction there at all, that is under the franchise.
Q. Then no people getting on the cars south of Orchard Beach would be entitled to a transfer?
A. I am not interpreting the law.

The COURT: Well, let it be stipulated—Judge, let it be
96 stipulated that the Seattle, Renton & Southern Railway Company operates a street railway *company* south of Orchard Beach so far as Renton. I don't know what the number of miles is.
Mr. SACHS: It is an electric railway, if the court please.
The COURT: An electric railway, I mean, yes, an electric car line; and Mr. Crawford ought to be able to tell, or you ought to be able to tell just the number of miles it is. Mr. Hughes ought to be able to admit it. That an electric car line that goes from this street—what is the name of that street?
A. Kenyon Street.
The COURT (continuing): Kenyon Street on down there to the town of Renton—and what is the distance? I don't know.
Mr. CRAWFORD: About 13.75.
The COURT: About thirteen miles.
Mr. CRAWFORD: 13.75 from the city.
The COURT: 13.75 or something like that.
The WITNESS: Yes, from the city, I believe not from Kenyon Street.
Mr. CRAWFORD: That is from the city.
The COURT: Not from Kenyon Street. How far is it——
Mr. CRAWFORD: About six and a half miles from Kenyon Street.
The COURT (continuing): And from Kenyon Street on out about six and a half miles, and that in that locality it is quite numerously settled by citizens who are transacting business in the city of Seattle. Now, that is within common knowledge and it
97 ought to be in the record here. That is all there is to it, and it won't take but a minute to get it in. About six and a half miles, isn't it?
Mr. CRAWFORD: To Kenyon Street.
The COURT: From Kenyon Street out to Renton.
Mr. CRAWFORD: Beyond our franchise, just about, yes. South of Kenyon Street.
The COURT: Can't you stipulate that, Mr. Hughes?
Mr. HUGHES: Certainly, Your Honor. We have no interest in his line aside from the line that is operating under the city franchise.
The COURT: That is a fact they want in the record.
Mr. HUGHES: We have no objection to that.
Mr. CRAWFORD: There is no claim of transfers, as we understand

it, then, for any passengers getting onto the line south of Kenyo Street or getting off of the line south of Kenyon Street?

Mr. HUGHES: It is only as to the line operated under the ci franchise, for which we claim transfers.

The COURT: Within the city limits.

Mr. HUGHES: Under the franchise, from Orchard Beach in.

Mr. CRAWFORD: It has not anything to do, then, with the pa sengers getting on or off of cars south of Orchard Beach; that is t understanding?

Mr. HUGHES: Yes, that is correct; unless they pay the proper fa under your franchise, from the limit of your railway under the ci franchise.

Mr. CRAWFORD: Yes; that is the same thing, as I look at it.

Mr. HUGHES: Well, I wanted to be specific.

The COURT: Very well, let that be in the record. Go o
98 now.

(Mr. SACHS:)

Q. Mr. McCloy, you say there are about thirty different routes o the Seattle Electric Company lines in this city?

A. About thirty.

Q. About thirty. And you have shown on this map, plaintiff exhibit "C," in blue, as I understand you, the longest route tha transfers could be made at the intersection with the Seattle, Renton & Southern Railway Company line?

A. They are shown in green and red.

Q. Green and red.

A. And not always the longest route. I selected routes longe than the route of the Seattle, Renton & Southern Railway Com pany. There are, however, some longer than are shown here.

Q. How many of those routes have you shown on that map?

Mr. HUGHES: Now, wait——

A. Well, they are of record; I could not say; I suppose there is eight or nine.

Q. Eight or nine, and you haven't shown any of the shorter routes?

A. No, I believe not, not except as where they are covered by routes that go further.

Q. Routes that make it longer?

A. Yes.

Q. Then there would be over twenty of these shorter routes of the Seattle Electric Company system?

A. I won't say without referring to the record. I could
99 tell in a few minutes how many of the Seattle Electric Company routes from a transfer point would be shorter.

Q. Well now——

The COURT: Have you agreed upon it, gentlemen?

Mr. HUGHES: I think we can agree upon the material fact. The court will understand that the evidence which has been given so far has been based upon the giving of transfers on transfers by the

various lines of the Seattle Electric Company, and that in referring to the various rights of ride which a passenger would have coming off the lines of the Seattle Electric Company at each intersecting point we have determined that right of ride not upon the first car upon which he gets, but upon the other intersecting car lines upon which he would have a right to ride from any given transfer point, and that from each intersecting point with the Seattle, Renton & Southern Railway his right of ride on the lines of the Seattle Electric Company, by virtue of transfers on transfers, is greater than the longest ride which you could have on the line of the Seattle, Renton & Southern Railway Company.

The COURT: I intimated a little while ago that I imagined that the ordinance would be put in.

Mr. HUGHES: It is before the court, it is pled.

The COURT: It is right here now, it has been pleaded in the papers.

Mr. SACHS: That is, the blanket franchise has been pleaded, hasn't it?

Mr. HUGHES: And the Seattle, Renton & Southern.

Mr. SACHS: Yes.

100 Mr. HUGHES: The city is prepared to concede, in order to save time, that if counsel's theory is correct then the Seattle, Renton & Southern Railway Company is entitled to more than fifty per cent of the car fare for each transfer issued. Their theory is that it is the run or mileage of the car issuing the transfer, as compared to the run or mileage of the car lines receiving the transfer, and that it is immaterial what transfers may be issued upon transfers by the Seattle Electric Company. We concede——

The COURT (interrupting): Let me have that pretty clearly in my head. You are getting a concession here now that may be vital.

Mr. HUGHES: We concede this, Your Honor, that taking the thirty lines of street cars now operated by the Seattle Electric Company, taking the routes operated by the Seattle, Renton & Southern Railway Company, that if it is the mileage of the car route of the Seattle, Renton & Southern Railway Company compared to the mileage of the car routes of the Seattle Electric Company, then the Seattle, Renton & Southern Railway Company will be entitled to more than fifty per cent as a basis of redemption.

Mr. SACHS: And how much more than fifty per cent the Seattle, Renton & Southern Railway Company would be entitled to, could only be ascertained by taking the different number of passengers on the different routes. If any definite percentage was ascertained in advance, it could only be ascertained upon a theory that the average number of passengers getting transfers and receiving transfers would be the same on all the routes.

101 Mr. HUGHES: Well, I believe I had better make my concession a little more specific again, then.

The COURT: Very well now.

Mr. HUGHES: We admit that there are certain car lines, operated by the Seattle Electric Company, which are shorter than the car

lines operated by the Seattle, Renton & Southern Railway Company, and that these respective lines intersect, and that if transfers are issued from one of the short lines of the Seattle Electric Company to one of the lines of the Seattle, Renton & Southern Railway Company, the mileage of the lines of the Seattle, Renton & Southern Railway Company will be greater than the mileage of the short lines of the Seattle Electric Company.

The COURT: That is obvious.

Mr. HUGHES: Yes.

The COURT: That is an obvious thing; but supposing a man on the Seattle & Renton Company should take a notion to get on a car, we will say out here on the hill, on the Washington Street hill, and he would want a transfer that would take him to Fort Lawton, how are you going to keep track of a thing like that?

Mr. SACHS: You take the run of the car that he goes on; if the car comes from Brighton Beach, you take the run of that car.

Now, in the other instance, if Your Honor please, supposing a passenger gets on one of the Seattle, Renton & Southern Railway Company's cars at Brighton Beach and only desires to ride to Madison Street, he asks for a certain car transfer, for instance he asks for a Lake Union transfer; he gets on a Lake Union car

102 and then it is the sum of those two routes—the car routes.

The COURT: Well, now, let me get this clearly. Is it your contention that he could only have one transfer and not have a transfer on a transfer?

Mr. SACHS: That is our contention.

The COURT: Now, that is not the way the Seattle Electric Company conducts its business in this town, ordinarily.

Mr. SACHS: If Your Honor please——

The COURT (interrupting): It does in some places; it is making a grave mistake, it is making the gravest mistake of its existence, in not always giving transfers on transfers; but ordinarily, in the ordinary route—I am just talking about common knowledge—you can pay your five cent fare and get a transfer unless they are afraid you are going to loop-a-loop, you know. Now, if they are not afraid you are going to loop-a-loop, you get your ordinary transfers and you can ride anywhere. Now, is the contention that you would only have one transfer issued? I want to know just what you——

Mr. SACHS: Under our contract, if the court please—we have a contract with the city of Seattle——

The COURT: Yes, I understand, I heard you read it; I have read it too, here.

Mr. SACHS: And we are proceeding under that contract. We are not bound by the terms or the purpose of the contract with the Seattle Electric Company.

The COURT: You think you would only have one transfer?

Mr. SACCHS: That is our theory.

The COURT: That is your theory.

103 Mr. SACHS: And our theory is, if this franchise provision needs any interpretation——

The COURT (interrupting): I understand.

Mr. SAGHS: (Continuing): — why, it is a car route proposition, it is based upon the same proposition as any railroad mileage in the United States, all railroad——

The COURT: (interrupting): I will hear from you, Mr. Howe.

Mr. HOWE: To avoid mistake, Your Honor, I think it is well to suggest that the Seattle Electric Company does not, of course, feel bound by the concessions that are made.

The COURT: I understand.

Mr. HOWE: I do not think mileage has anything to do with this, and at the proper time I will want to submit that matter to the court.

Mr. HUGHES: I am not prepared to say that I think that mileage has anything to do with it, but I desire to meet all contentions that may be urged here.

The COURT: Well, let your concession go for the present. But I do not see how in the world, in the end of it, from a business standpoint—I am just talking now—that granting what may happen and may not, I don't know—if the court should hold that these transfers shall interchange, I don't see how, from a business standpoint, you could undertake to measure blocks and routes. It would get you all in confusion and you would get us all into trouble. And then another thing of it is, above everything else, for this is going to go, gentlemen, it is going to go to accommodate the public and the public must have the greatest service that they are entitled
[61] to, and that greatest service would be the interchange of transfers. Now, you might just as well make up your mind to it.

Mr. SAGHS: Your Honor, we understand that, if the court please, that is, under our franchise——

The COURT: If I am going to do anything at all—if I ever do anything at all it will be really to not split hairs, it is going to be the greatest interchange that is made. Now, you see I am getting along in this case pretty fast.

Mr. HUGHES: Now, I desire the court to understand that the concession which was made proceeds solely upon the theory that the court is going to decide that it is the mileage of the car runs——

The COURT: (interrupting): Yes, I understand.

Mr. HUGHES (continuing) —— that determine the basis of settlement. If the court decides that it is the mileage of the car issuing the transfer as compared to the mileage of the car receiving the transfer——

The COURT (interrupting): I understand.

Mr. HUGHES (continuing): —I desire to have the record show this: If that is to determine the basis of redemption, then the city concedes that the Seattle, Renton & Southern Railway Company will be entitled to more than fifty per cent——

The COURT: Yes, I understand.

Mr. HUGHES (continuing): —but if transfers are issued upon transfers, then our other testimony shows that it is entitled to less than fifty, or if any other method is adopted. In giving the court

that concession, let it go with this subsequent statement in
105 that it is based upon——

The COURT: Yes, with the subsequent statement.

By Mr. SACHS:

Q. Mr. McCloy, in September, 1908, what position did you hold with the city?

A. I was not with the city then.

Q. You were not with the city at that time?

A. No sir.

Q. You have examined the files in the office of the Superintendent of Public Utilities of this city and are familiar therewith?

A. Which files do you refer to?

Q. The files in September, 1908, in regard to certain correspondence of that office with the Seattle Electric Company and the Seattle, Renton & Southern Railway Company, and with the files and schedule made up of different runs of the different cars of those two different roads?

A. I have gone over that matter, yes sir.

Q. Now, taking these documents which I hand you, I will ask you if you know the signature attached to the first document, dated September 18, 1908 (Handing papers to witness)?

A. I should say that was the signature of Mr. A. V. Bouillon.

Q. And at that time Mr. Bouillon was the Superintendent of Public Utilities?

A. Yes sir.

Q. And you recognize that letter, together with the accompanying documents, as files that are a part of the records now in the
106 office of the Superintendent of Public Utilities of this city?

A. There is a great deal of correspondence on that subject, I should say that this is a part of it.

Mr. SACHS: Is there any objection to that?

Mr. HUGHES: Yes, we object to it as incompetent, irrelevant and immaterial.

The COURT: I don't know what bearing it may have, and it may have some and may have none. I will let you read it, judge.

Papers referred to were received in evidence and marked respondent Seattle, Renton & Southern Railway Company's exhibit number "1".

(Mr. SACHS:)

Q. Mr. McCloy, you understand, do you not, that one of the routes in ordinance number 15,919 of the city of Seattle, under which the Seattle, Renton & Southern Railway Company is now operating, is a route over Dearborn Street?

A. Yes.

(The COURT:)

Q. Where do they get onto Dearborn Street, do you understand Mr. McCloy?

A. That is a route on the franchise, but they are not operating on Dearborn at all yet, your Honor.

(The COURT:)

Q. Where do they, under the franchise?
A. On Rainier Boulevard?

(The COURT:)

Q. Rainier Boulevard?
A. At the intersection of Dearborn.

Mr. SACHS: At the intersection of Rainier Boulevard.
107 Did your Honor mean at this end?
The COURT: No, I mean the other end.
Mr. SACHS: They go on Dearborn Street at Rainier Boulevard and then proceed west on Dearborn Street to Seattle Boulevard and Fifth Avenue South, and then on Fifth Avenue south northerly to Main Street and on Main westerly to Fourth and on Fourth up north.
The COURT: To Blanchard.

(Mr. SACHS:)

Q. Now, Dearborn Street has not been graded has it Mr. McCloy?
A. No sir.
Q. And has not been put in shape under that regrade which is now progressing there so as to be useful for the street car line under this franchise?
A. No sir.
Q. Now, Fourth Avenue, over which this same franchise extends, north of Pine Street has also been and is in a regrade district, is it not.
A. Yes sir.
Q. And this is being and has been for sometime being regraded?
A. Yes sir.
Q. And now has that street under the regrade there been paved by the city so that the tracks of the Seattle, Renton & Southern Railway Company could be constructed there and operation had over that street?
A. As far as Virginia Street, yes.
Q. But north of that it has not been, has it?
A. No sir.

Q. Now isn't it a fact that the Seattle, Renton & Southern
108 Railway Company is proceeding and has been for some time proceeding to construct its line of railway and lay its tracks north of Pike Street and on past Virginia Street?
A. Not past Virginia Street: they have gone——
Q. (Interrupting.) To Stewart Street?
A. To Stewart Street, yes.
Q. To Stewart Street.

(The COURT:)

Q. That is the street this side of Virginia?
A. Yes sir.
The COURT: That is south of Virginia, the first street south.

(Mr. Sachs:)

Q. At this time, that is, on September 4, 1908, referring to respondent Seattle, Renton & Southern Railway Company's exhibit number "1", the distances of the Seattle, Renton & Southern Railway Company's line, as given there, was as they existed at that time (handing paper to witness)?

A. I can't swear to that. I did not get this statement up. I assume that it is correct.

Q. Yes at that time?

A. Yes.

Q. Since that time, however, there is the distance that has been built as far north as Pike, to be added to that, is there not?

A. Yes sir.

Q. Now, what is that distance?

The Court: From Washington to Pike?

A. I could not tell you accurately, Your Honor. I suppose it is 4,000 feet.

108½ (Mr. Sachs:)

Q. About 3,800 feet, isn't it?

A. 3,800 feet, yes.

Q. About 3,800 feet. Well, in estimating the distance or the length of the route of the Seattle, Renton & Southern Railway Company, that 3,800 feet should be added in each instance that is to the routes of the cars going as far as Pike Street?

A. In answering that I would have to take into consideration the method employed in exchanging transfers. If the Seattle Electric Company transferred to the lines of the Seattle, Renton & Southern Railway Company, they would probably insist upon hauling the transfers as far south—hauling the passengers as far south as Washington Street and transferring at that point. The Seattle, Renton and Southern Railway Company, however, if they followed the same rule, would carry the passengers as far north as Pine Street. That is simply assuming what the companies would do. I am not able to say what they will do.

Q. But in determining the car route, if you are determining the percentage of what each company should receive upon the car route as that has been determined under that statement that you have there, you would have to add in each instance to the route the car route of the Seattle, Renton & Southern Railway Company, 3,800 feet, would you not?

A. Yes, when the Seattle, Renton & Southern Railway Company was transferring to the lines of the Seattle Electric Company.

Q. Yes. And in that event that the Seattle Electric Company had since that date extended any of their routes mentioned
109 therein, why, the extension would have to be added to theirs?

A. Yes sir.

The Court: Well now, is it a matter to take into consideration whether most of the traffic would be over Fourth Avenue or over, say, First or Second?

Mr. SACHS: Why, we don't——

The COURT (interrupting): As a matter of fact, it is common knowledge to counsel in the case, if it would not be to the Supreme Court that likely will review this matter, that there is mighty little business done on Fourth Avenue. Fourth Avenue leads practically to Pike Street, quite a thoroughfare, quite a lot of business, but the principal business interests of Seattle are on Second Avenue and on First Avenue. Would that have anything to do with it? It is just a question that occurs to the court.

Mr. SACHS: We don't know, if Your honor please.

The COURT: Well let's find out.

Mr. SACHS: How can we, until we operate in that way? That is just what we claim, that we are unable to determine and nobody else can determine at present, that the system——

The COURT (interrupting): We are not fortune tellers.

Mr. SACHS: No.

The COURT: We are not going into the realm of what the city hereafter may become, but the present situation and the present condition of affairs. Now, what the situation is now we all know—how is that, isn't that the truth, that the business of the city is done on First and Second Avenue?

110 The WITNESS: Yes sir.

The COURT: I am not trying to try this lawsuit.

Mr. SACHS: If that is the case, as I understand what Your Honor is trying to arrive at would be that the most of the——

The COURT (interrupting): The natural transfer would be onto Second Avenue and First Avenue?

Mr. SACHS: Which would be——

The COURT (continuing): That is what I am trying——

Mr. SACHS: Which would be in the business district.

The COURT: In the business district.

Mr. SACHS: You would have a short haul going between Pike Street and Washington Street.

The COURT: Naturally.

Mr. SACHS: Yes.

The COURT: Naturally.

Mr. SACHS: And that is just what we say, if Your Honor please, that this contract means, that it provides for, and it does not provide a transfer or a transfer over any extension of any line, and that if, Your Honor please, is what we shall claim in the argument is the meaning of this section, and that was the reason it was provided for, the run of the car; that there was no other way of arriving at it.

The COURT: But it is also a matter of fact that there is quite a district south of Washington Street that is reached by street cars here; one of them that goes down over Second Avenue and another one goes down First Avenue, isn't it, that reaches the south district?

The WITNESS: There is one going over First Avenue 111 South to Georgetown, and other lines to the west side of the city—if that is what you mean—and one out over Maynard Avenue and Twelfth Avenue South to Beacon Hill, one over May-

nard Avenue and Seattle Boulevard and Eighth Avenue South t
Georgetown.

Q. Now, if that be a fact, McCloy, those lines going that wa
would be going right back from the direction that you would com
in on the Seattle, Renton & Southern Railway, it would not be i
the same general direction, would it?

A. That is all from a point of view. If a person wanted to g
from Georgetown to Columbia by car line, he would travel in th
same general direction by coming in over the Georgetown rout
and going out over the Seattle, Renton & Southern Railway, h
would be entirely within his rights under the transfer regulations
I Believe; you could not expect him to walk over the hill.

Q. Would that come under this term, that no transfer shall b
good except upon the first connecting car at the point of transfe
and upon a car going in the same general direction?

A. That would be covered, in a broad sense, I should say, in my
humble opinion—common sense opinion.

The COURT: I think that is a good construction.

(Mr. SACHS:)

Q. Now, to meet the court's question, I want to put a question or
two: There are a number of lines that are running, operated by the
Seattle Electric Company, on First Avenue, going south of Wash-
ington Street?

A. Yes sir.

Q. Such as the West Queen Anne line?

A. Yes sir.

Q. The Kinnear Park line?

112 A. Yes sir.

Q. The east Union line?

A. Yes sir.

Q. And a number of other lines?

A. Yes sir.

Q. And there are a number of lines on second Avenue operated,
such as known as the North Queen Anne line?

A. Yes sir.

Q. And they go down Second Avenue South for a certain dis-
tance?

A. For a short distance, two blocks.

Q. For a short distance.

(The COURT:)

Q. To two blocks?

A. Yes.

(The COURT:)

Q. And then return?

A. Then return.

(The COURT:)

Q. On First Avenue?

(Mr. SACHS:)

Q. But these on First Avenue South, that I have mentioned, go, some of them, quite a distance, for instance, the West Queen Anne line, that goes to——

A. (Interrupting.) Walker Street.

Q. Where?

A. West Queen Anne Line goes to Walker Street.

Q. And some of them go as far as Spokane Avenue, do they not?

A. Those that go to Spokane go beyond, go even further than Spokane; there are none that go and turn back from Spokane.

Q. But those lines that go further are lines that come around and the terminus is at Yesler Way?

A. Yes sir.

Q. And then they proceed south over to West Seattle or
113 Young-town or South Park, and so forth?

A. Yes sir.

Q. Now, taking the route of those cars proceeding there southerly, in that direction, how many of the routes of those cars are longer than the route of the cars of the Seattle, Renton & Southern Railway Company from Orchard Beach?

A. As I have scaled them this—my figures are of course subject to correction, they are approximate, but I made them as nearly correct as possible—the Alki Point line, the Fauntleroy line——

Mr. HUGHES (interrupting): We admit the figures shown in Mr. Bouillon's statement are correct.

A. (Continuing:) —the West Seattle line.

The COURT: Well, you have got a scale there; why not put that——

Mr. HUGHES (interrupting): Well, that is already admitted, Your Honor, the respective lengths of the lines are as shown in Mr. Bouillon's statement.

The COURT: Yes.

Mr. SACHS: With the addition of the extra mileage.

Mr. HUGHES: With the additional three fourths of a mile added to yours.

Mr. SACHS: 3,800 feet.

Mr. HUGHES: 3,800 feet, subject to that addition.

The WITNESS (continuing): —and the South Park line.

(The COURT:)

Q. What is the South Park line?

A. That is the line going over Occidental Avenue——

(The COURT:)

Q. I know where it goes, but tell just what the distance is.
114 A. In fact it is 32,500 feet.

(Mr. SACHS:)

Q. Well, take a short line, take the Kinnear Park line, what is the distance there?

The COURT: What is the Kinnear Park line? Why not have that put in? We have got it right here.

Mr. HUGHES: It is in evidence already. Is that Mr. Bouillon's statement?

Mr. SACHS: It is in evidence, all these lines.

Mr. HUGHES: Yes.

The WITNESS: Yes.

Mr. HUGHES: The length of every car route is now in evidence, Your Honor.

The COURT: Is it? Very well.

Mr. HUGHES: Yes.

The WITNESS: I will say, however, that some of Mr. Bouillon's figures are rather out of date, the lines have been changed, the routes have been changed considerably. That was nearly two years ago.

(Mr. HUGHES:)

Q. Is there any material change?

A. I have never checked it over sufficiently, Mr. Hughes, but there are a number of changes. I simply want it to be known, in letting this go in record, that I won't say that it is correct up to date.

(The COURT:)

Q. What he has in his hand there is correct up to date.

A. Substantially.

(Mr. SACHS:)

Q. So is the other—isn't the other substantially correct?

A. This is substantially correct, yes.

Mr. SACHS: I don't think, Your Honor, there is much difference between the two of them. If there is any difference to be found at any time, we have no objection to stipulating that that change may be made so as to show the correct mileage.

115

The COURT: Very well.

(Mr. SACHS:)

Q. Now, referring to the respondent Seattle, Renton & Southern Railway Company's exhibit number "1," what is the state of facts, if you know, as to the number of Hillman City runs, now, of the Seattle, Renton & Southern Railway Company, as compared with this statement?

A. I don't understand what you mean, judge.

Q. Well, how many Hillman City runs are there now of the Seattle, Renton & Southern Railway Company?

The COURT: You mean how many cars go out and back in a day?

Mr. SACHS: Yes.

(The COURT:)

Q. Do you know?

A. I don't know accurately.

(Mr. SACHS:)

Q. Don't you know that all the Hillman City runs, practically all of them, have been extended to Orchard Beach or to Brighton Beach?

A. The cars, as I see them on the street, are not designated "Hillman City" very often, they are designated according to different streets—Orcas Street, Kenyon Street, and so forth. I believe a number of them go beyond that point—go to Kenyon Street.

Q. Isn't it a fact, Mr. McCloy, that excepting during rush hours, that all the cars of the Seattle, Renton & Southern Railway
116 Company that used to only go to Hillman, go to Orchard Beach or Brighton Beach, and there is only about—in rush hours, about three hours, that cars go only as far as Hillman?

A. I would accept your statement as being correct, yes sir.

Q. During the day there is no car, except in the rush hours, that now stops at Hillman——

A. (Interrupting.) I believe not.

Q. (Continuing:) —and turns back. Do you know what the distance between Hillman and Brighton Beach is?

A. No, I don't.

Q. Do you know approximately?

A. I don't care to guess.

Q. It is further south, further out?

A. Yes sir.

Q. And about three fourths of a mile, isn't it?

A. Well, let it go at that; I do not care to place myself on record in a matter of distances, Your Honor, where it would be impeachable at all.

Q. Orchard Beach is still further out than that, isn't it, further south than Brighton Beach?

A. Orchard Beach is at the city limits.

Q. How *far* further is it—is Orchard Beach, do you know, from Hillman?

A. I don't know.

Mr. HUGHES: Judge Sachs, I have already admitted that assuming transfers to be distributed equally among all the car line routes of each company, and assuming that the mileage of those routes is the basis of redemption, that you would be entitled to more than fifty per cent——

The COURT (interrupting): More than fifty?

117 Mr. HUGHES (continuing): —more than fifty, with the qualification that goes with the preceding concession, assuming that transfers were divided equally among all of the routes of both companies and that it is the mileage of those routes, of the cars issuing and the cars receiving, with no second transfer to be taken into consideration.

The COURT: Well, but supposing there is a second transfer?

Mr. HUGHES: Yes. Well, that is a question coming later. Then his testimony states the condition that would result.

Mr. SACHS: I want to ask the witness under that condition:

(Mr. Sachs.)

Q. There are a number of routes of the Seattle Electric Company—car routes of the Seattle Electric Company on which no transfer is issued on a transfer?

A. The Seattle Electric Company's transfer rules are in a chaotic state at present. I don't know whether a person can ride or not and I don't know of anybody that does. You can one day and you can't the next. As a rule they transfer on a transfer where it is necessary. I have ridden on five or six different cars, transferring on a transfer in each case, but I would not guarantee that I could do it again because the first conductor that I went up against might fall down on it.

The Court: That is going to be the one difficulty in this matter: for instance—to just testify on behalf of the court—I can take a car ticket and leave this court house, go out right up to James street, get a transfer to go over to Broadway, get a transfer to go over on Capital Hill, and go home for four cents.

118 Mr. Sachs: For four cents?

The Court: Well, my car ticket. If I want to go down town tomorrow morning I have got to pay five cents and I have got to get off at a certain place, can't ride to some other place, and I have got to pay five cents. Now, this is common knowledge, there is no testimony here but what anybody knows to be a fact, and a ticket issued on one street car line, if you happen to get on one car that runs on the same street they will not give you a transfer to another; for instance, a transfer issued by the Madison Street car line will not entitle you to get a transfer from Third Avenue to James Street to go to the court house. You can't leave the Lincoln Hotel and ride down to Third Avenue and then get on Third Avenue and get a transfer and come up to the court house. I am going to take that into consideration, I don't care a cent what anybody thinks about it, because that is common knowledge. The Seattle Electric Company in this town had better have somebody at the head of it that will get some kind of a system that will be some sort of a business proposition before they will have very much respect from me—that will give a different kind of a system than this sort of transfer affair, but at the same time——

Mr. Sachs (interrupting): The court don't understand our position.

The Court: I understand what position you are in, you are trying to prove that they haven's got any system by which you would know whether——

Mr. Sachs (interrupting): What we would get out of it.

The Court: What you would get out of it. The witness
119 has just testified to what the court says. I know. I know it is a fact. I know what he has told is the truth.

Mr. Sachs: I know, as far as that is concerned, this respondent don't object to how many transfers the Seattle Electric Company issues, whether they issue transfers on transfers or not, but the question is——

The COURT (interrupting): I know, you think they have only got to issue one transfer.

Mr. SACHS: No, that is no part of our contract with the city.

The COURT: I mean they have only got to accept your one transfer.

Mr. SACHS: Our one transfer. How is that proportion to be divided?

The COURT: I see what you are getting at.

Mr. SACHS: If it is divided under what we claim are the terms of our contract with the city, it is a matter to be easily determined.

The COURT: Well then, Mr. Bouillon determined it then.

Mr. HUGHES: Yes.

The COURT: Mr. Bouillon determined it.

Mr. SACHS: And if that is the court's determination of it, if that would prove/ to have been proper, to be the percentage that we were entitled to, why, all well and good, determine it in that way, but——

The COURT (interrupting): I know, but it would not accommodate the public and it is not a thing that ought to happen in a community where people are running public service corporations.

Mr. SACHS: If it is true, as alleged in our answer, that, this contract which we have with the city is a contract for which we paid a valuable consideration——

The COURT (interrupting): How much did you pay for it?

Mr. SACHS: We gave to the city of Seattle the right-of-way extending from Fourteenth Avenue and Jackson Street in this city for six miles, a width varying from sixteen feet to thirty feet and over, and that was one of the conditions that we were compelled to perform and convey to the city before we could have this franchise, and the franchise so recites. As I say, if that is a contract with the city, and we are willing and ready to live up to that contract, all we ask on the part of the other party to the contract is that they live up to it. Now, we have made a contract. We are here for the purpose of declaring that at all times we are ready and willing to live up to it, and desirous of so doing; but we also say that by any arbitrary method of determining what we should pay or what we should receive on this question of transfers, such as a fifty per cent basis, that we could not operate——

The COURT (interrupting): What other further testimony have you got, Mr. Hughes?

Mr. HUGHES: Well, I am through.

The COURT: What other testimony—have you got any testimony (addressing Mr. Sachs)?

Mr. SACHS: Why, if it is admitted that the allegations of our answer are true, why——

The COURT (interrupting): I suppose it will be admitted that you want that kind of a franchise. But I will tell you what I am going to do with you, if I can, I am going to make both sides give the freest kind of transfers—that means to go all over the city—if I can. Now, that is a question of law. I am going to do that and I am going to not worry very much whether you get fifty

per cent or forty-nine per cent or fifty-one per cent; if I can do it I am going to do that.

Mr. SACHS: Whether we can operate or not.

The COURT: Oh, don't worry about your operating, you will operate. Don't worry about that. No trouble about that; but I am only going to do it if I can, and if I can't do it I want to know it. It is getting towards ten o'clock. I want to think about this thing a little, and I want to give you gentlemen the fullest opportunity for a legal argument, and I will even extend this thing a little. You see I want to be pretty fair with everybody. I will hear from Mr. Howe, on behalf of the Seattle Electric Company. This is a matter started by the city, and he is entitled to be heard on behalf of the Electric Company, and I will take another evening, or I will stay here tonight; I would just as soon stay until midnight, I am a night hawk anyhow.

Mr. SACHS: If your honor please, I want the question of the testimony——

Mr. HUGHES: Yes, there are certain other things I want introduced.

The COURT: I thought you said you were through.

Mr. SACHS: I didn't say I was through, if Your Honor please, I say, if the allegations of this answer are admitted, of course
122 we have no testimony to offer, would not offer any in support of it.

The COURT: Is it agreeable?

Mr. HUGHES: No, we do not admit the allegations.

The COURT: Oh, how much of it do you admit, Mr. Hughes?

Mr. HUGHES: I prefer to have them testify to it. I think certain things.

The COURT: Are you through with Mr. McCloy?

Mr. HUGHES: Yes.

The COURT: That may seem to counsel as a peculiar way to try a lawsuit—the court telling you in the beginning what sort of a decision is in the court's mind—but that is just a habit I have gotten into.

Mr. SACHS: We always understand that statement is to be taken as being made by the court under the law.

The COURT: It is with a grain, you understand.

Mr. SACHS: That is under the law.

If your Honor please, we desire to offer in evidence the ordinance—the first original ordinance of the city of Seattle, being ordinance number 1441, entitled, "An Ordinance granting to S. L. Bowman and his assigns, a franchise to build and operate a street railway in the city of Seattle."

The COURT: Well, that is the original ordinance.

Mr. SACHS: That is the original ordinance.

The COURT: Yes, I understand that ordinance.

Mr. SACHS: It will be found on page 503 of the revised ordinances of the City of Seattle, 1893.

Mr. HUGHES: That is no longer in force.

Mr. SACHS: That is the ordinance that was required to be sub-

dered by the Seattle, Renton & Southern Railway Company, the respondent herein, under ordinance 15919.

The COURT: That is the ordinance they had——

Mr. SACHS (continuing): And we want to call Your nor's attention particularly to that ordinance in which no men- n is made whatsoever regarding transfers.

The COURT: Yes.

Mr. SACHS: That the complaint in this case, or the affidavit upon ich this writ was issued, alleges that that ordinance provided contains certain conditions as to transfers, which is denied by r answer, and that this ordinance does not contain any provisions all in regard to transfers.

Mr. HUGHES: We do not allege that at all. You say you offer

The COURT: I didn't recollect that. I read this over tonight fore the lights went out here, and I read it over the other day too.

Mr. SACHS: Yes, it does so allege it.

The COURT: Does it?

Mr. SACHS: Yes sir.

Mr. HUGHES: That is the second ordinance. We object, of rse, to the introduction of this ordinance.

The COURT: Objection sustained. You put it in as the founda- n of something that you surrendered?

Mr. SACHS: Yes.

The COURT: That is all right, let it go in for that purpose only, not that it impeaches the petition.

Mr. SACHS: Oh, I withdraw the statement I made. I thought it allege that.

The COURT: I have read it over here tonight.

Mr. SACHS: Now, if Your Honor please, we desire to offer in evidence the ordinance number 15919, entitled, "An or- dinance granting to William R. Crawford, his successors and gns, a franchise to construct, maintain, and operate a system of et railways in the city of Seattle, passed the city council April 1907, and became an ordinance pursuant to section sixteen of icle 4 of the City Charter, May 6, 1907. Accepted May 20, 7."

The COURT: Since Mr. Hughes did not admit your answer, I will it the ordinance.

Mr. HUGHES: I have pleaded that, it is in before you.

The COURT: I will admit it anyway.

Mr. SACHS: I understand from counsel that it is admitted that nance number 15,919 has——

The COURT (interrupting): That is the 1907 ordinance?

Mr. SACHS: Yes.

The COURT: The Crawford ordinance.

Mr. SACHS: The Crawford ordinance, has been duly assigned to Seattle, Renton & Southern Railway Company, and it is the nance under which it is operating, and that it has complied

with sections 3 and 10 as interpreted by ordinance number 17,06 of the city of Seattle.

The COURT: Is that all satisfactory?

Mr. HUGHES: Just state what that was?

Mr. SACHS: That section 3 is as to construction, that is——

Mr. HUGHES: I admit that the old franchise was repealed an surrendered, and that they are now operating under the new fran chise.

The COURT: And that it has been properly and legally assigned

Mr. HUGHES: Yes.

125 The COURT: And that they are a street railway company

Mr. SACHS: And that we gave to the city a quitclaim deed——

The COURT: Yes.

Mr. SACHS (continuing): ——of the right-of-way.

Mr. CRAWFORD: And that they fulfilled all the terms and conditions required.

Mr. SACHS: Well, fulfilled the terms and conditions require under that ordinance.

The COURT: Yes. Let that be admitted. I don't understand it is being impeached, anyhow.

Mr. CRAWFORD: Well, we set it up and they did not admit it.

The COURT: All right, that is all right.

Mr. SACHS: The court, I understand, will take judicial notice of the charter of this city.

The COURT: I think so.

Mr. SACHS: Well, we will call Your Honor's attention, then, under that, to section 7 of article 8 of the charter of the city of Seattle and it has an amendment of March, 1908, relating to the Superintendent of Public Utilities and prescribing his duties and showing for what term he was appointed, and so forth, in his office.

The COURT: Very well.

Mr. HUGHES: The court understands that counsel stated that we admitted certain facts. Now, we did not admit them in the words counsel, I simply admitted that they were operating under this ordinance number 15,919, and that that had been assigned to the Seattle, Renton & Southern Railway Company; that was the extent of my admission.

Mr. SACHS: Well, don't you admit that we have surren-

126 dered the Bowman franchise?

Mr. HUGHES: Oh, yes, I will admit that.

Mr. SACHS: And that we have quitclaimed to the city, given the city a quitclaim deed to this right-of-way.

Mr. HUGHES: I admit that you have dedicated to the city the right-of-way formerly——

Mr. SACHS: Under this franchise, given under this franchise, as required by the franchise.

Mr. HUGHES: Yes, well, that you have dedicated that right-of-way in the center of Rainier Boulevard, as required by the franchise.

The COURT: Is it not something that Mr. Hillman undertook to reserve for himself?

Mr. SACHS: No, sir, not this part of it. That was there long before Mr. Hillman was. We did not dedicate it, we gave a deed.

Mr. HUGHES: To be used by the city for street purposes.

Mr. SACHS: Yes, for street purposes.

Mr. HUGHES: Yes, I understand.

The COURT: Now, what further proof do you want, judge?

Mr. SACHS: Just a moment, Your Honor, please. We have no further testimony, if the court please.

127 (*Remarks by Mr. Hughes.*)

Mr. HUGHES: The court realizes the nature of the question involved, and realizes it- magnitude and importance, and realizes the right of the people that are affected. It is, when all things are considered, solely a question as to how far a public service corporation, the recipient of a franchise from the hands of the public, can receive the benefits of that franchise easement and yet evade the obligations. The Seattle Electric Company, under the terms of its blanket franchise and of subsequent franchises, owes the duty to exchange franchises with the Seattle, Renton & Southern Railway Company, and is here offering so to do.

The COURT: That ordinance has not been introduced, but——

Mr. HUGHES: I have pleaded it, Your Honor, so that it is before the court.

The COURT: You have pleaded it and it is admitted. I know what it is. Go ahead.

128 Mr. HUGHES: If Mr. Howe will consent, I desire now to offer in evidence all of the franchise provisions contained in the charter and ordinances of the Seattle Revised Edition of 1908 relating to the franchises of the Seattle Electric Company and the Seattle, Renton & Southern Railway Company, to be considered as admitted in evidence.

Mr. HOWE: We have no objection to it.

The COURT: Very well.

Mr. HUGHES: Now, this blanket franchise was passed in 1900. It provided for the consolidation of a great many lines, provided for the issuance of transfers between those lines; further provided for the exchange of transfers with the Seattle, Renton & Southern Railway Company's line.

The COURT: By the way, I had forgotten—does it provide for a transfer with the Seattle, Renton & Southern Railway Company?

Mr. HUGHES: Yes; it was then the S. L. Bowman line.

The COURT: Oh, yes.

Mr. HUGHES: The S. L. Bowman line has since become the Seattle, Renton & Southern Railway. At that time it was the S. L. Bowman line.

The COURT: Yes.

Mr. HUGHES: So that this franchise provided for the exchange of transfers with what is now the Seattle, Renton & Southern Railway Company.

Mr. SACHS: There is one thing I forgot. I desire to introduce here in evidence another franchise, that is known as the
129 Muckler & Wightman franchise, as pertaining to this question of transfers.

The COURT: The Seattle Electric Company's franchise has got a peculiar clause in it, as I now recollect it—a peculiar clause that—I don't know who ran the "cold deck" in, but it is there that you can't get a transfer on a ticket, that you have to pay the five cent fare.

Mr. HUGHES: Yes; that is all we are asking in this action.

The COURT: That is all you are asking in this action?

Mr. HUGHES: Yes.

Mr. SACHS: But in our franchise, we want to call the court's attention to the fact that we are required to give a transfer on a ticket.

The COURT: I am just calling your attention to it.

Mr. HUGHES: We are not asking for that in this action at all, Your Honor, simply ask that transfers be issued on payment of a five-cent fare to either company.

Mr. SACHS: Then, if Your Honor please, I understand the city is contending to enforce a certain portion of this contract and not another portion of it.

The COURT: You see the Seattle Electric Company's franchise, as I now remember it—it has been quite a while since I have read it—but it reads, you know, that you can ride on a five cent fare, but in order to get a transfer you must pay a five cent fare. You can ride on a ticket, that is, so many tickets, twenty-four or twenty-five, I have forgotten, sold for a dollar, but they do transfer on a five cent fare. Isn't that the way of it?

Mr. SACHS: Yes, the Seattle Electric Company. But, if Your Honor please, the Seattle, Renton & Southern Railway Com-
130 pany's franchise requires them to transfer on a ticket, and it requires——

The COURT (interrupting): How many tickets for a dollar?

Mr. SACHS: Twenty-five tickets for a dollar.

The COURT: The same.

Mr. SACHS: Yes; four cent tickets, they are.

Mr. HUGHES: Are you sure, Mr. Sachs?

Mr. SACHS: Just one moment.

The COURT: What is that ordinance?

Mr. SACHS: The ordinance is ordinance number 15,205, found on page 631 of the charter and Ordinances of the City of Seattle, 1908, "An Ordinance authorizing Merle J. Wightman and C. E. Muckler, their successors and assigns, to construct, operate and maintain a street railway in the city of Seattle."

The COURT: Who are those people, I don't remember that?

Mr. SACHS: That is an ordinance giving these people a franchise on Fourth Avenue.

The COURT: Oh, yes.

Mr. SACHS: On the same line that we have got.

The COURT: I know what it is now.

Mr. SACHS: And the same transfer provision is in this ordinance as in the one that we have.

The COURT: That is, transfer on tickets?

Mr. SACHS: Transfer on a ticket, and the transfers are to be exchanged upon the same basis——

The COURT: Yes.

Mr. SACHS (continuing): ——as set forth in the ordinance that we are operating under.

Mr. HUGHES: We object to it, Your Honor, because it is no longer a franchise, it was not accepted, no work done under
131 it; it is no longer in existence; it has not anything to do with the case.

The COURT: There has never been anything done under that. What was ever done under that Wightman ordinance?

Mr. SACHS: There has never been any action taken by the city, or anybody else, to declare this franchise at an end or void.

The COURT: Nobody has done anything under that. What have they done?

Mr. HUGHES: Nothing, it is dead.

Mr. SACHS: Well, that is neither for me nor for counsel to say; I don't know whether it is dead, or what it is.

The COURT: Well, you prove it has been kept alive and I will let you. I remember it very well.

Mr. SACHS: Well, if your Honor please, it is here as an ordinance on the books, and we offer it. It covers a portion of the same route as we are now operating under, and it contains the same——

The COURT (interrupting): Is it assigned to you?

Mr. SACHS: No, it is not, Your Honor. It is not our property.

The COURT: Objection sustained.

Mr. SACHS: We take an exception, if the court please.

The COURT: Very well.

Mr. HUGHES: Have you read it into the record.

The COURT: Read it into the record. It is something that somebody was going to do and did not do.

Mr. SACHS: It is ordinance number 15,205, "An Ordinance au-
132 thorizing Merle J. Wightman and C. E. Mukler, their successors and assigns, to construct, operate and maintain a street railway in the city of Seattle. Approved January 11, 1907. Accepted February 5, 1907. Comptroller's file No. 31,493." Found——

The COURT (interrupting): You don't pretend that has been assigned to you, and you don't pretend to offer any evidence that there has been anything done under it.

Mr. SACHS: We offer it as it exists in this book.

The COURT: Simply as something that the city was once willing to do.

Mr. SACHS: It is on page 631 of the "Charter and Ordinance of Seattle" of 1908?

The COURT: Objection sustained.

Mr. SACHS: We take an exception, if the court please.

Mr. HUGHES: I have stated that in the year 1900 this blanket

franchise was granted, that provision was made thereunder whereby the Seattle Electric Company should exchange transfers with the Seattle, Renton & Southern Railway Company. The provision is found on page 183 of the Seattle Charter. That section, after providing for the exchange of transfers with the Seattle, Renton & Southern Railway Company, then goes ahead and lays down the basis upon which the exchange is to be made, and it is a fifty per cent basis. The court will find it——

The COURT (interrupting): Under the head of "Transfers"——

Mr. HUGHES (continuing): ——under the head of "Transfers"——

"Any passenger who has paid fare, shall, on request, be furnished with a transfer to that certain system of street railways authorized by ordinance ——" and then, dropping down to the last paragraph, "An ordinance granting to S. L. Bowman and his assigns a franchise to build and operate a street railway in the city of Seattle" and so forth, which is the Seattle, Renton & Southern Railway Company line.

The COURT: I see.

Mr. HUGHES: So that section there provides, in express terms, for the exchange of transfers. Then comes a proviso setting forth the basis between the two companies: "provided that this provision respecting transfers to said other lines shall be in force only as to such of said other lines as shall give and receive transfers to and from the lines of said grantee, their successors and assigns."

The COURT: I see that is the way that reads, "shall give and receive transfers."

Mr. HUGHES: Yes, provides for the mutual exchange.

The COURT: Yes.

Mr. SAUNDERS: That is the Seattle Electric Company's franchise?

The COURT: Yes, that is the Seattle Electric Company's franchise.

Mr. HUGHES: Seattle Electric Company's franchise, on a fifty per cent basis, two and a half cents on a cash fare and one and a quarter on school children tickets. Now, subsequent to that time the S. L. Bowman line was reorganized and a new franchise was granted covering the same physical property. That franchise is found on page 651 of the City Charter, and in the next to the last section the court will find the provision relating to the issuance of transfers. Now, I will read that to the court, that provision——

The COURT (interrupting): This is now the Seattle, Renton & Southern Railway Company.

Mr. HUGHES: This is now the Seattle, Renton & Southern Railway Company, granted seven years after the franchise of the Seattle Electric Company went into effect, which the court will remember made it the duty of the Seattle Electric Company to exchange transfers with the Seattle, Renton & Southern Railway Company on a fifty per cent basis. The Seattle, Renton & Southern Railway Company then changes its franchise and gets a new franchise. That new franchise has the provision providing for the exchange of transfers, which is as follows: "The payment of a cash fare or the presentation of a ticket shall entitle the passenger to a transfer to any line of any street railway company now operating within the city limits, or that may hereafter operate therein, which

give and receive transfers to and from all the lines owned, ated or controlled by such company, to and from the lines of ive, his successors and assigns." There the court sees there is an ...duty imposed upon that company of exchanging transfers ... line in the city.

he COURT: What are you going to do with that question of t?

r. HOGATE: I am not asking for that at this time.

he COURT: I know, but what are you going to do with it?

r. SCOTT: We are asking for the whole franchise ordinance, whole provision, to be enforced.

r. HOGATE: They are asking for nothing, they are here resist- this attempt to

he COURT (interrupting): Let me ask you. If they had to give ... transfer on a ticket, you know, on the basis of twenty-five ... tickets for a dollar, and they were compelled to give a trans- fer over to the Seattle Electric Company, how can we adjust ...ferent?

r. HOGATE: We are not asking for that. Suppose we concede that is void, Your Honor, for this purpose, that would be de- ... in a subsequent action; we do not desire to confuse too many ... in this action; but suppose, for the purpose of this action

he COURT (interrupting): It is here, though, it is right up in ... of us.

r. HOGATE: No, it is not, because we are not asking that the ... require the issuance of transfers upon the presentation of a ... sued by either company; we are not asking that the Seattle ...ric Company issue transfers on a four cent ticket, we are not ...ng that this company do it; we are asking—

he COURT: You don't ask for it?

r. HOGATE: No.

he COURT: Just on the five cent fare.

r. HOGATE: We carefully avoided asking for any transfers on ...sentation of a ticket. We did not desire to have that question ...ded in this case, but to bring it up at a subsequent time, and I ... present this issue clearly to the court as to the right of the ...

he COURT: I want to get the issue that is here—

r. HOGATE: That is the issue in this case, as to the right of the ... of this city to the issuance and receipt of transfers upon the ...entation of a five cent fare alone, over both lines of both com- ...panies. Now, I have read that section. We will leave out the word "ticket." It then provides that any passenger pay- ...ing a five cent fare on the Seattle, Renton & Southern Rail- ... Company shall have the right to the exchange of transfers with ... Seattle Electric Company." It says to any other line operating ...in the city limits, which shall exchange with the Seattle, Ren- ... & Southern Railway Company. The only other line at that ... operating in the city limits was the Seattle Electric Company. ...ously referred to that. It makes it the duty of the Seattle, ...ton & Southern Railway Company to exchange with the Seattle ...ric Company. There is the first essential element in that sen-

tence, that is placed first, it is almost a complete sentence there. Then follows a subsequent clause, a sort of proviso, and it is this proviso which counsel claims defeats the right to transfer. Here is the proviso. It goes ahead and states what the basis of exchange shall be. After first making it the duty to exchange transfers with the Seattle Electric Company, it then says, "On the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received." Now, the court will observe first this point, that the basis of exchange between the two companies is something with which the public has absolutely no concern, that is a private matter between this company and the Seattle Electric Company. It is made the duty to exchange transfers. That was the only interest
137 which the public had in this whole contract—the matter of exchange. The basis upon which that should be done with another company was a matter in which the public had absolutely no interest, it is not even germane to this franchise. That is one thing.

The COURT: In other words, the point you are now seeking to make is that all this court has got to do is to order them to transfer and then let them squabble out their racket?

Mr. HUGHES: Well, I think that it is very material for that purpose, and further, for the purpose of showing the construction that must be adopted by this court. It is rather used at that time in the form of an agreement to strengthen the proposition that the court in construing this provision—

The COURT (interrupting): What authorities have you there, Mr. Hughes?

Mr. HUGHES: I have no authorities on that particular point.

The COURT: I will hear from Judge Sachs.

Mr. SACHS: If your honor please, we first, as counsel on the other side, desire to call your Honor's attention to some elementary principles of law. The first one is that the courts don't make contracts for the people.

The COURT: Yes.

Mr. SACHS: The city of Seattle has made a contract with this company for which, as I say, and as the proof shows, we have given a valuable consideration to the city, and it is more than an ordinary franchise, it is more than an ordinary license, it is a contract
138 upon a valid consideration; the city is expected to live up to the terms and conditions of the contract; the other contracting party, or his assigns, is expected to live up to the terms and conditions of the contract. This defendant has by its answer alleged that in that contract there are certain provisions—there are a number of routes mentioned—that the city has failed to live up to a certain number of conditions in the contract, that is, so as to provide streets over which this contract is binding, over which we have a right to build.

We have further set up that we are ready and willing to perform

this contract on the question of the transfer. We say that by this contract we are obligated to transfer—to issue and receive transfers, but we are obligated only under the terms and conditions of that contract. The city contracted that it would require us to issue and receive transfers upon a ticket, a four cent ticket or upon a cash fare of five cents, to all connecting lines that would exchange or would receive transfers from us and issue transfers to us, upon a certain basis of division of the fares. Now, obviously, to say that because the city of Seattle has seen fit to make another contract with some other company, requiring it to receive and exchange transfers on a different basis would bind us to the basis that the city had contracted with somebody else, would show an ignorance of the law. We cannot be held to the terms and conditions of any basis of a division of fare that the city of Seattle has contracted with somebody else. This court cannot say that you have agreed to transfer"——

139 The Court: Now, Judge, you want to get down to this: There is only left in it just this—you agree that you have got to transfer——

Mr. Sachs: Yes, sir, upon the terms and conditions of this contract.

The Court: Got to transfer. Have you got to take the common sense view of it, or have you got to have some sort of a system that somebody says he will ride a block or two blocks——

Mr. Sachs: No, your Honor, there is not any such thing in this franchise, there is no interpretation necessary of this language, it is plain and it will be understood by any person that has any conception or has any knowledge of the system of interchange and division of fares existing throughout the whole United States.

The Court: I think I have some. I have spent many years——

Mr. Sachs: Now, let's take that system: Your Honor will know that if you desire to go from here to Chicago, we will say——

The Court: Yes sir.

Mr. Sachs (continuing): —you will buy a ticket routing you over several roads.

The Court: Yes sir.

Mr. Sachs: Now, then, the——

The Court: I mean you think that we have got to keep that system of bookkeeping that——

Mr. Sachs: There is no system of bookkeeping required—if Your Honor will listen to me.

The Court: We will simply say the Lake Union line or the Kinnear Park line or all these other different lines——

140 Mr. Sachs: If Your Honor please, this is the system. We have a transfer upon which all these lines are named; a man gets upon a Seattle, Renton & Southern Railway Company car and he says, "I want a transfer to the Lake Union line."——

The Court: Yes.

Mr. Sachs (continuing): —he gets a transfer to the Lake Union line.

The COURT: Well now, wait just a moment. How are we going to get out of this confusion. It is a matter of practical common sense, the ordinary man on a car of the Seattle Electric Company—that is in evidence here—on the Lake Union line, can transfer, we will say, to Madison Street car line, he can do that. Now, how could the Seattle Electric Company, in any practical sense, keep track of your tickets?

Mr. SACHS: If Your Honor please, a man going on the Lake Union line, coming in on our line, don't transfer to the Madison Street line.

The COURT: Well, going out from your line to the Lake Union line he may want to go——

Mr. SACHS (interrupting): He gets off our car at Second and Washington and takes the Lake Union car line at Second and Washington and goes on his route where he wants to go; if he wants to go on the Madison Street line, he calls for a Madison Street transfer.

The COURT: He says, "Give me First Avenue North——"

Mr. SACHS: But, if Your Honor please that is what this does not say, it says "Route of the car." Every car in this city, of the Seattle Electric Company, has got a definite route, it is known
141 by a definite route—Kinnear Park line, the Queen Anne, the West Queen Anne, the North Queen Anne, the Madison Street, the Yesler, the South Park, and every line is known by a route. These routes have certain distances. Every one of the routes of the Seattle, Renton & Southern Railway Company has its name, it has a certain distance over which it travels.

The COURT: Now, let me ask you another question: What do you care—do you care a whoop whether he goes out as far as Madison Street and then changes to the Madison Street car line?

Mr. SACHS: No, if Your Honor please, but we care what line he gets onto, because that is just what this contract is meant to meet; it supposes a system by which the companies, or any number of companies, can interchange on an equitable basis, you get paid for your services; and that is what it is here, they carry a man on the Lake Union route; we will say the Lake Union route is four miles long; we carry the man from Orchard Beach; we will say that is six miles long, for illustration; there is ten miles.

The COURT: It is six miles long?

Mr. SACHS: Well, we will say it is six miles long. There is ten miles that the two routes of those two cars cover; then we would be entitled to six tenths of the fare and they would be entitled to four-tenths of the fare. Under our franchise we are required to give a transfer on a ticket. Now, when we go to settle with them why, we settle with them on that same basis, for what we
142 receive; there is the proposition, it is as plain as it can be. Every line has a route. There is no argument, there is no question in anybody's mind in regard to what that means. For instance, he comes to us, he rides from Brighton Beach, which is six miles long, he gets on a Brighton Beach car or Orchard Beach

car or any of the cars, wherever the route is, and now he takes the Green Lake line, we will say, he calls for a Green Lake transfer, he gets one punched "Green Lake."

The COURT: All right. Let me ask you this question—I am trying to get this solved from your idea——

Mr. SACHS: Yes.

The COURT: Suppose I am coming in from Green Lake——

Mr. SACHS: Yes sir.

The COURT: I have a right to come in from Green Lake, which is away out here the other side of nowhere ——

Mr. SACHS: It is about ten miles.

The COURT: Takes fifteen minutes to come in ten miles, and then I want to ride on your carline out here to this printing plant, corner of——

Mr. SACHS: At Hillman city?

The COURT: No, up there at the Metropolitan Press. I have forgotten what the name of the street is——

Mr. SACHS: Yes sir.

The COURT (continuing): —which is only about a mile and a half out ——

Mr. SACHS: Yes.

The COURT: Now, what proportion of the fare——

Mr. SACHS: It depends upon—he calls for a transfer for a certain route of a car——

143 The COURT: He calls for the car; that don't mean clear out to Orchard Beach.

Mr. SACHS: If he got on an Orchard Beach car——

The COURT: He may get off out there.

Mr. SACHS: How is that?

The COURT: I get off at the Metropolitan Press.

Mr. SACHS: We have no control over where you get off, of Your Honor please.

The COURT: That is the trouble.

Mr. SACHS: But that equalizes itself up in this way, if Your Honor please: Supposing a man comes into our car and calls for a Green Lake transfer; now, he don't go to Green Lake, he goes to Westlake Boulevard——

The COURT (interrupting): Yes, gets off at Pike.

Mr. SACHS: Gets off up at Pike Street, we pay and allow them for the whole of the Green Lake transfer, just as they allow us for the whole on the other, and that equalizes itself, there is no question about that, that will average itself up. There is no other system that you can arrive at and upon which you can divide these transfers, except the car route; you can't keep a tab upon every passenger, where he gets off or where he gets on a street car, therefore, if Your Honor please, you must adopt some consistent method.

The COURT: I see the point that you are making, that it just gives the route.

Mr. SACHS: The route. We may lose in one instance, we may gain in another instance; the other company may lose and they

may gain; but this, if Your Honor please, was adopted by the city and by the other contracting party as the equitable division,
144 the basis, and it was the way that it could be ascertained.

Now, if Your Honor takes and compares this method with the one that is used on steam roads, connecting lines on steam roads, there, if Your Honor please, the exact mileage is known between them, the exact distance that the passenger rides is known, there is no question of how it should be divided; he rides on one road fifty miles, he rides on another road a hundred miles, and the division is in proportion to the mileage; but, as I say, you could not determine, on a street car, how far the man rode on each company, therefore, you take the routes of the car that he gets on and gets off and you add them up and then you divide them, and you divide that fare paid among the two companies in accordance with those routes.

Now, the question of bookkeeping is a very simple matter in regard to that. The Seattle Electric Company, as Your Honor knows, has transfers, they issue them all the time among themselves. They keep an account. If Your Honor please, they keep an account of the different transfers between the different routes. It is as easy if Your Honor please, to keep an account of the different transfers as they are punched between these two companies, or any number of companies.

The COURT: Now, Judge Sachs, I can see your point and the elementary law that you are seeking to impress upon me. I take it for granted I can remember some of it. Is there any particular thing?

Mr. SACHS: Why yes, if the court please.

145 The COURT: I know the point that you are after, exactly.

Mr. SACHS: Now, we want to call your attention to that portion of the evidence which we have introduced, that under the city charter of this city there is provided a superintendent of Public Utilities

The COURT: Yes, I will hear you on that.

Mr. SACHS: It is provided in that Charter that the Superintendent of Public Utilities has certain duties, and among those duties is the one to see that the operations of the street car and the public service corporations are performed under their contracts. Now, in September the then Superintendent of Public Utilities, in taking up the contract made, Ordinance 15919, interpreted this transfer system—which we maintained, if Your Honor please, is binding upon the city, made by an officer whose duty it was to look after this matter, whose duty it was to enforce the transfer provision here—he made a calculation, he made his tables showing the length of every route in the city, has compared the routes of the Seattle Electric Company with the routes of the Seattle, Renton & Southern Railway Company. He found that providing certain things were true, that is, that the number of transfers given were equal upon all lines, that the Seattle Renton & Southern Railway Company was entitled to fifty-nine and one-half per cent, that the Seattle Electric Company was entitled to forty and one-half per cent. Now

if your Honor please there is a finding under the evidence, which is not disputed, it is admitted that that was the correct basis upon which to calculate, that that was the interpretation by this
146 public officer whose duty it was to make interpretation; that since that time there has been added to the line of the Seattle, Renton & Southern Railway Company some 3800 feet, which must be accounted for in its distribution. While we do not admit that Mr. Bouillon's calculation was correct we do say, and in our answer set forth, that we were entitled to a great deal more than fifty-nine and a half per cent, at that time even; that we were entitled to seventy-five per cent of these transfers; and that since that time we have added enough to make us entitled to eighty per cent. Your Honor can see what an injustice it would be, if it is a fact that we were entitled to fifty-nine and a half per cent and the other company was entitled to forty and one-half per cent ——

The COURT: In practical life you would not lose a dollar, it would be money in both of your pockets.

Mr. SCOTT: Well, that may be Your Honor's conclusion.

The COURT: That is my notion.

Mr. SCOTT: But, your honor, it is not the conclusion of the people who operate this road, who suppose that they know something about it.

The COURT: Well, I know something about it.

Mr. SCOTT: It is not the conclusion that we have come to, and the people that operate this road have come to after a thorough investigation of the matter.

The COURT: I have seen too many men squabble over nothing. I tell you in practical life it would be a benefit to both of you. I don't say that the law ——

Mr. SCOTT (interrupting): Your Honor cites practical life.
147 The whole New York system, the different systems there, went broke on an equal division of the money; and we claim and we set forth in our answer that we could not operate under it. If your Honor please, if we had to turn over to the Seattle Electric Company one half of our gross receipts, why, we could not make enough money to pay our operating expenses and our fixed charges. We are not contending for anything that is not just or equitable. We come in here, if Your Honor please, saying that this is the contract and we are willing to live up to it, and we are ready and willing to live up to it as interpreted by the authorities of this city, that had a right to interpret it, if it needs any interpretation. We don't ask this court to say to us that, "Here you have got to take fifty per cent because, forsooth, the city of Seattle made a contract with somebody else." Suppose your Honor should make two contracts to build two houses; one house you contract to build for five thousand dollars, another house you contract to build for seventy-five thousand dollars; could Your Honor say to the man—the seventy-five thousand dollar contract man, "You have got to take five thousand dollars because Johnson takes five thousand dollars for the same work?" No, Your Honor, that is not what courts do. I say the city has made a contract with us, we claim that there is no interpretation

necessary to that contract, that it is as simple a matter as learning A, B, C, that it requires no intricate system or anything of that kind——

The COURT: I lived in this community when they consolidated the other roads, and there was not a one of them that was making a dollar, they were not making a dollar, they were every one of them, bankrupt, but they got a system of transfers and they got them all together and they ran as a sort of unit and they have every one of them been paying institution. Now You have got a road down there, a valuable asset to the community but you have got it so that the people there can't transfer anywhere else, they don't go half as much as they would go; my own brother lives down there, he don't come to see me half as much as he would if he could get a transfer; and in the end the extra amount of travel and the extra amount of business—in the end, in the real end, the real amount of business, I am telling you you would not lose very much. But I am not sure.

Mr. SACHS: Now——

The COURT: Listen, Judge, just a moment, don't get excited——

Mr. SACHS: I am not excited, if the court please.

The COURT: I am not certain, under that ordinance, but what we have got to accept your construction, and that is that it be by the routes; that is all there is in your argument.

Mr. SACHS: That is all.

The COURT: On the practical side of it I do not care to hear argument, because, the practical side of it, I have got my notions about that, that I have seen enough of life and I have got my notions on that, and I know, for the benefit of the community, that a public service corporation— that is, you talk about what you have given away to get that franchise—right-of-way—what you have given—the real truth of the matter is a public service corporation ought to once in a while serve the public. But I have always had a notion in my life that the clause in the Seattle Electric Company franchise which they stick for, that is, that you have got to pay a nickel before you can get a transfer—I have always thought it ought to be a transfer on a ticket, and I have always thought that was a slip-in-sort of a joker—but it is there just the same and they hold for it. Now, the question is, you are wanting to hold for your contention, which is on the route—the transfer on the route, and if it is flesh for one it is flesh for the other. I don't know I am not so sure but what you are correct about that. That is the real milk of the cocoanut. But I want to ask you this question, and I want you to answer me this: You are compelled to give, under your franchise, a transfer on a ticket?

Mr. SACHS: Yes, Your Honor.

The COURT: See.

Mr. SACHS: Yes, Your Honor.

The COURT: Very well. Now, the Seattle Electric Company is not compelled to give a transfer on a ticket, you understand. Now how am I going to as a court—or any other court—have this matter equalized by letting them take your transfer on a ticket, even by the

route, and you not take anything from them but a transfer on a nickel?

Mr. SACHS: We are compelled, under our contract, to transfer——

The COURT (interrupting): On a ticket.

Mr. SACHS (continuing): With any company that will
150 transfer with us, under the terms laid down in the contract. Now, if they will transfer on a ticket, we will have to accept it, if they will issue a transfer on a ticket we will have to accept it, that is all there is to it.

The COURT: The city in this case is asking that I compel/ both of you to transfer on a nickel, not on a ticket.

Mr. SACHS: If Your Honor please, that is true, they are asking that as far as that is concerned, they say they are not asking and that the other may be void. I do not see how it can be void, it is one of the terms of this contract, which we are willing to live up to. Now, Your Honor asked one question, you said that all the street railway lines in this city at a certain time were bankrupt and that they were not making any money, they consolidated and they are issuing transfers and they were making money; but your Honor must remember that all those lines belong to one company, they are not dividing anything with any other company.

The COURT: If they didn't do this, they could not pay. The Madison Street was owned by one Company.

Mr. SACHS: I understand that was it, but it was not the question of issuing transfers that made them prosperous, it was this city and the growth of the city and the number of people they carried, that made them prosperous, and all that. If the city had continued in the way it was, Your Honor knows that no matter how many consolidations or how many transfers they issued, that it would not have done them any good financially. Now, if we have got all
the receipts, if we were transferring with another line that
151 belonged to this same company and we got all the receipts, it would not make a particle of difference how we transferred, because the same company got all of it, it would be just taking it out of one pocket and putting it into the other. But here is an independent company. If we have got to pay so much money out of our pockets and only get so much back, why——

The COURT (interrupting): I will tell you, judge, there is one question in your case, and that is whether it is on the route or on the basis of transfers as given by Mr. Bouillon. I will hear from Mr. Howe.

Mr. HOWE: Your Honor, I want to get the history of this matter briefly before Your Honor. These franchises, of course, have to be construed in the light of the historical facts which then existed. The first thing to be considered is this: Prior to the blanket franchise there were several corporations here, which were subsequently merged into the one, and became operative under the blanket franchise. That franchise constituted, just as the counsel state here, a contract with the city; that franchise fixed the basis on which transfers were to be given and received.

Mr. SACHS: That is, so far as the Seattle Electric Company.

Mr. HOWE: So far as the Seattle Electric Company is concerned Now, so far as the Seattle Electric Company is concerned, the city could not pass any subsequent ordinance which would make the Seattle Electric Company exchange for a less proportion of
152 the fares than the blanket franchise fixed, because any subsequent ordinance undertaking to do that would be a law impairing the obligation of a contract, as Your Honor well understands. Now, it was fixed, therefore, that the least the Seattle Electric Company could be required to accept for a transfer would be two and a half cents on a full fare and one and a quarter cents on a half fare. Now, when the Crawford franchise was passed, the Seattle Electric Company was seeking nothing, the applicant for the Crawford franchise was seeking something. The Seattle Electric Company therefore, could not be required to give up anything as an inducement for the granting of the Crawford franchise. The applicant for the Crawford franchise, however, could be compelled to submit to certain requirements as a condition of getting it. Very well. What were the conditions inserted? The conditions were not that the Crawford franchise grantee was required to make a dedication of any particular right of way, not that it was required to surrender any particular franchise, but if it acquired any road operating under an existing franchise and saw fit to bring that road under the operation of the Crawford franchise, then it was to surrender all previous franchises and to dedicate the right-of-way. Therefore that was done and this franchise stands on the same basis as any other

Now, I agree, Your Honor, with Judge Sachs, that this company can only be required to exchange transfers with the company which will also exchange. Now, bear in mind the Seattle Electric Company's basis was fixed. The transfer provision in the Craw-
153 ford franchise meant something and it meant that the city desired to secure a system of transfers between a company which it could not control and one which it could control. Now, Your Honor, the particular thing that strikes me as being exceedingly strange in the Crawford franchise is this: If that fare was to be divided on a mileage basis or on the length of the route, it is very strange that in that franchise neither length of route nor mileage is once mentioned, but the fare is to be divided on the basis of a cash redemption as the run of local routes bears to the sum of the runs of local routes of the cars on which the transfer is issued and the transfer is received. If we take the Crawford franchise and take every route mentioned in there as a local route, and take the blanket franchise and take all the routes there mentioned as local routes, Your Honor will see that that transfer is to be redeemed in the proportion of about six to twenty; or, suppose we take this view, that a passenger gets on the Crawford line, goes over the Second Avenue line, goes up to Madison Street and thence to the lake, the Seattle Electric Company in that case has two local routes which were represented at the time——

The COURT: Mr. Howe, isn't this local route business, after all, just a matter of an arbitrary temporary adjustment in an office?

does not mean anything, does it, in reality? It means, in reality, e system, doesn't it?

Mr. HOWE: I think that is one view.

The COURT: What?

Mr. HOWE: I think that is one view that might be taken. If Your Honor takes that view, then it is on a fifty per cent basis.

The COURT: Yes.

Mr. HOWE: If Your Honor takes the other view, that it is on the ute basis, then the Seattle Electric Company would get more than ty per cent.

The COURT: Mr. Howe, excuse me for interrupting.

Mr. HOWE: Certainly, Your Honor.

The COURT: You heard the testimony of Mr. McCloy tonight——

Mr. HOWE: Yes.

The COURT (continuing): —to the effect that they called from e Sound out to the power house on the Madison Street line one ute, and on out to the lake another route.

Mr. HOWE: Yes.

The COURT: Well now, there is no extra fare out along there, and exchange of transfers, it is just an arbitrary localism, isn't it?

Mr. HOWE: But that I think would not apply in this case at all.

The COURT: No, it is just a localism.

Mr. HOWE: I think that is a localism. But take this case, supse you take, of the Seattle Electric Company, its routes which er the routes when the companies were all separate, that would a different proposition.

The COURT: Yes, that is different.

Mr. HOWE: Now, there *there* would be a sound reason for holdg what was originally operated as one line—I mean as two lines—ding that those were two routes, but I agree that when it comes to a mere arbitrary matter of dividing up one route and calling it two routes, that cannot be done.

The COURT: They talk about thirty routes: there are no rty different lines of the Seattle Electric Company.

Mr. HOWE: No.

The COURT: It is merely a localism, a name of it in the office.

Mr. HOWE: Yes.

The COURT: There are no thirty lines of the Seattle Electric Comny here.

Mr. HOWE: No, but Your Honor can see this, there was the old e Street line——

The COURT: Yes.

Mr. HOWE: The Madison, the Second Avenue and those.

The COURT: Yes, I know.

Mr. HOWE: Those being merged in one, bear in mind those comies were cut down from a ten cent fare to a five cent fare. Under theory which is now advanced, that should be further cut down two and a half cent fare; that is the proposition advanced here. f you turn to the Crawford franchise, Judge Sachs says there is

no room for construction. Well, I listened to hear how he would explain that section, and the explanation he gave was this—and Your Honor put this question to him before he got to his explanation: Suppose a man got on your line two blocks, we will say, from Yesler Avenue, and rode two blocks on it and then got on the Green Lake line? Judge Sachs claims that for riding two blocks the Seattle, Renton & Southern Railway Company should get the full length
of their road, while the Green Lake line should get the full
156 length of the Green Lake line. Well, Your Honor, that would be an absolutely absurd thing, when the franchise contains no language in regard to mileage and no language in regard to length of line.

Mr. HUGHES: I will state to the court the principle upon which we rely; I had not reached that in my argument. It is briefly this, Your Honor: The Seattle Electric Company provision provides for fifty per cent basis of exchange——

The COURT: Yes.

Mr. HUGHES: It is here and willing to exchange on that basis. This subsequent franchise was granted in the light of that and for the purpose of effecting an exchange of transfers; transfers can only be exchanged between these two companies on a fifty per cent basis. Bearing that in mind, bearing in mind the purpose to be accomplished by that transfer originating on the Seattle, Renton & Southern Railway——

The COURT (interrupting): Now, gentlemen, I don't know, of course there is a very peculiar franchise that runs to the Seattle, Renton & Southern Railway Company—what page is that, 652?

Mr. HUGHES: 651. I wish to suggest this view to the court before closing tonight, and that is this, that where it says there that the basis of redemption is as the route of the car issuing the transfer bears to the sum of the routes—now, this is the construction which we wish to adopt, Your Honor, that it is the route as a unit. As Mr.
Howe says, the word "mileage" or "length" is not used there.
157 The COURT: Gentlemen, it is all ridiculous to undertake to say that the Seattle Electric Company has got thirty routes in it.

Mr. SACHS: If Your Honor please, the Lowman Franchise describes twenty-two routes.

The COURT: Supposing it does.

Mr. SACHS: They are offering those.

The COURT: There are different places that they must give transfers, that is all. I recollect that. I have read that franchise enough times to remember what it means. It just tells where you shall give transfers. Let me tell you: A public service corporation owes something to the people, there is no use talking, and there is no escape from it, and the man that owns it, the man that operates it, the man that controls it,—it is the gravest mistake of his life if he don't recognize it—there is nothing in this life that can long exist without in some way or other recognizing the rights of the people, the real people that are its patrons. No, I have read all these matters, and I tell you now the real intent of it is not a little short route like the line

ute between First Avenue down here and the power house here on
he short James Street car line, it don't mean that, and it don't mean
little route from that place out just simply to Pike Street; it means
he system, that is what it means, it means the system, they have got
change with the system. Now, you know I am not a very good
nd to take matters under advisement and go around and poke
no musty holes about it; when I have heard counsel as fully as I
have tonight on a matter, and I get my mind made up, it is
s just about made up as good as it would be if I studied longer.

The judgment of this court will be that these two concerns
nsfer equally, that they divide equally and that on a transfer that
issued by the Seattle, Renton & Southern Railway Company the
attle Electric Company shall issue a ticket upon it, and that the
ople can travel all over this city with one transfer from the other,
d that the transfer that the Seattle Electric Company issues to this
mpany—that the people can ride upon it, and if they go out ex-
nding and keep on extending and growing, they can keep on doing
, and that will be the judgment of the court.

59 STATE OF WASHINGTON,
County of King, ss:

I, Wilson R. Gay, one of the judges of the Superior Court of the
ate of Washington, in and for King County, and sitting in Depart-
ent No. 5 of said court, and the judge before whom the above en-
led cause was tried, *to* hereby certify:

That the matters and proceedings embodied in the foregoing state-
ent of facts are matters and proceedings occurring in said cause,
d the same are hereby made a part of the record herein.

I do further certify that the same contains all the material facts,
atters and proceedings heretofore occurring in said cause and not
ready a part of the record herein.

I do further certify that the foregoing statement of facts contains
l of the evidence and testimony introduced upon the trial of said
use, together with all objections and exceptions made and taken to
e admission or exclusion of testimony, and all motions, offers to
ove and admissions and rulings thereon; and that plaintiff's ex-
bits "A," "B" and "C," and respondent Seattle, Renton & South-
n Railway Company's exhibit "1" hereto attached are all the ex-
bits admitted upon the trial of said cause.

Done in open court this 24 day of May, A. D. 1910.

WILSON R. GAY, *Judge.*

Filed May 24, 1910. D. K. Sickles, Clerk.

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160 No. 9058. Department One.

STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Respondent,
v.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, Appellant.

Filed Mar. 23rd, 1911.

This is a mandamus proceeding commenced in the superior court for King county, wherein the relator prayed for relief substantially as it was finally granted by the issuance of a writ of mandate directed to the defendants, Seattle, Renton & Southern Railway Company, and the Seattle Electric Company as follows:

"You are hereby commanded that you and each of you, immediately upon receipt and service of this writ upon you, issue transfers when demanded, upon presentation of a five-cent fare, or school children's ticket when presented by a school child, from all of your lines within the city limits to all of the lines of said other company, and that you and each of you receive the transfers so issued by such other company, and carry such passenger to any point on your line in the same general direction within the city limits, upon a basis of redemption by each company of two and one-half cents for every transfer issued by it on a five-cent fare and one and one-fourth cents for every transfer issued on a school children's ticket."

From this decision the defendant Seattle, Renton & Southern Railway Company has appealed to this court.

The facts upon which the correctness of the decision of the trial court may be rested are in substance as follows: The appellant and the Seattle Electric Company each own and operate a system of street railway in the city of Seattle. These are the only systems of street railway in operation in the city. Appellant operates its system of railway under a franchise granted by the city to its predecessor in interest, containing a provision requiring it to give and receive transfers to and from all other systems of street railway in the city as follows:

161 "Transfers.—The payment of a cash fare or the presentation of a ticket shall entitle the passenger to a transfer to any line of any street railway company now operating within the city limits, or that may hereafter operate therein, which shall give and receive transfers to and from all the lines owned, operated or controlled by such company, to and from the lines of grantee, his successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received; but no such transfer shall be good except upon the first connecting car at the point of transfer and upon a car going in the same general direction."

The Seattle Electric Company operates its system of street railway under franchises granted by the city which the superior court has adjudicated in this case require that company to give and receive transfers to and from appellant's system of railway upon the terms specified in the writ of mandate above quoted. The Seattle Electric Company was a party defendant to this proceeding in the superior court, and it has not appealed from the final decision therein which determined its duties and obligations relative to exchange of transfers with appellant. The railway system of appellant consists of a single line extending from the business center of the city to the city limits on the south a distance of several miles. The railway system of the Seattle Electric Company consists of a net work of lines covering largely the whole city. A passenger has the right to ride for a five cent fare from one of the termini of the railway system of the Seattle Electric Company to another terminus thereof in the same general direction, or to any intermediate point. A passenger also has the right to ride from one terminus of the railway system of appellant to the other for a five cent fare. School children have the same right upon the railway systems of both companies, upon presentation of a school children's ticket which they may purchase from the respective companies at two and one-half cents each. The right of a passenger to so ride the entire distance between any two termini of each system of railway is not affected by the number of transfers it may be necessary for him to make from one car to another in accomplishing such a journey. In making such journey a pas-
162 senger would ride, in some instances a greater and in some instances a less distance upon the Seattle Electric Company's system than he would upon appellant's system.

We have given no attention to the conditions under which the Seattle Electric Company may be required to exchange transfers with appellant under the franchises of the Seattle Electric Company as an original proposition. That question was finally adjudicated by the superior court, and as we have noticed the Seattle Electric Company has not appealed therefrom. We need therefore to look no further than the language of the writ of mandate above quoted to ascertain what those conditions are. From that language it appears that the duties of the Seattle Electric Company and of appellant are the same towards the public and towards each other relative to exchange of transfers, unless we are to conclude that the superior court has erroneously determined the duties of appellant in that regard under its franchise. The question then is, not what the duty of the Seattle Electric Company is, but what is the duty of appellant under its franchise? If it be found that the conditions upon which appellant is required to exchange transfers under its franchise is consistent with the conditions upon which the Seattle Electric Company is required to exchange transfers, so that the rights of neither will be violated by enforcing such exchange, it will necessarily follow that the decision of the superior court is not erroneous. The position of counsel for appellant is, that it cannot be required to exchange transfers unless the basis of settlement for such exchange shall be as provided in its franchise. For the purpose of our present inquiry

we will adopt this view, though counsel for the relator argue that the basis of settlement is not necessarily the test of appellant's obligation to exchange transfers. We have seen that appellant's franchise provides for exchange of transfers with any company now or hereafter operating street railways in the city which shall give
163 and receive transfers to and from the lines of appellant "On the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received." Thus it is plain that appellant is required to exchange transfers with all companies operating street railway systems in the city, whenever such company or companies consent to or are required to exchange transfers with appellant upon the basis of settlement set forth in its franchise. This brings us to the inquiry, what is that basis of settlement?

Counsel for appellant contend, in substance, that the proper basis of settlement under its franchise is to give to each company such proportion of the fare of each passenger transferred, as the distance traveled upon each system of railway bears to the entire distance traveled upon both systems upon such fare and transfer, treating the distance which the passenger is so entitled to travel upon each system as the distance actually traveled, and that this would result in appellant receiving more than one-half of the fare. For the purpose of our inquiry we will assume that it is practical to arrive at a settlement upon this basis with a sufficient degree of accuracy, if it is intended by the terms of appellant's franchise to make that the basis of settlement. Counsel for relator contend, in substance, that each company is entitled to such proportion of the fare, as the distance the passenger may travel, regarded as a unit, upon its system of railway, bears to the sum of all the distances the passenger may travel, each regarded as a unit, upon all the systems of railway over which such passenger may travel upon such fare and transfers issued therefor. That is, the distance the passenger may so travel upon each system, must be regarded as a unit of equal value. Now if each system of railway, or rather the entire distance upon each of which the passenger may ride for one fare and transfers issued therefor,
164 is a unit of equal value, to be used in computing the proportionate amount of the fare each company is entitled to, then the relator's contention is well founded.

We will first consider "The run or local route of the car on which transfer is received." Treating that as a unit for the purpose of determining its value, as compared with the whole, the question is suggested, does it mean that the passenger may ride the same distance on that railway system as if he had paid the usual fare; or does it mean that he may travel only the distance run by the car upon which he first tenders the transfer. It seems to us the words "local route" there used, means the entire distance the passenger may travel upon that system of railway as if he had paid the ordinary fare whether he changes cars upon that system or not. If we should hold that the local route of that car meant only the distance that the first

car upon which the transfer is tendered proceeds, that company could so regulate the running of its cars that connect with the system issuing the transfer, that such cars would proceed from such connection a very short distance. This is plain by reason of the fact that the distance each car is run is within the control of the company operating the system, as the evidence shows. There does not appear to be any requirement that passengers shall be carried over a route by one or any particular number of cars. This would enable the company to practically nullify this transfer provision. We are of the opinion that this provision means that such a transfer gives a passenger the same right to travel, as to distance, over the railway system to which it is tendered, as if he paid an ordinary fare upon that system. It seems to us the other units going to make up the whole are to be measured by the same standard, that is, that each consist of the entire distance a passenger may travel over each of the systems of railway upon such fare and transfers issued therefore, as if he was paying an ordinary fare upon each of such systems. The language defining the whole is, "The sum of the runs of the local route
165 of the cars from which the transfer is issued and on which the transfer is received." This language, it is argued, was evidently used in view of the possibility of their being in the future more than two companies operating street railway systems in the city and was intended to require such an exchange of transfer between all of such companies and appellant's system, as would enable a passenger to ride the entire distance across the city in one general direction upon one fare even though such passenger so rode over portions of the lines of all such railway systems regardless of their number. It may be that an attempt was thus made to provide such a general transfer system. We express no opinion as to how nearly it was accomplished by this language. However, we are here only concerned with two systems, and the language of this transfer provision of appellant's franchise furnishes a basis of settlement between two as it would between a greater number of systems. The word "sum" is as correctly used in referring the result of two units added, as in referring to any number of units added. We conclude that each system of railway, or rather the entire distance a passenger may travel upon each system of railway in the city constitutes a unit, the sum of which goes to make up the entire service required to be furnished a passenger upon payment of one fare. Each of these units we hold, must be regarded as equal in quantity and value and since there are here involved only two systems of railway, the distance a passenger is entitled to so ride upon each will be regarded a unit, and of course their sum as two. It follows that the appellant and the Seattle Electric Company are each entitled to one-half of the fare thus earned. This is the basis upon which the trial court decided that the settlement is to be made under appellant's franchise, and we think that decision is free from error.

It is suggested that appellant's franchise seems to require it to issue transfers upon the presentation to it of a ticket by a passenger, as well as upon a cash fare, and it appears in the evidence that it

sells tickets in quantities, at four cents each, which entitles
166 a passenger to ride the entire length of its railway in the city. This is in no way involved in this case. The writ of mandate goes no further than to require the exchange of transfers upon the payment of a five cent cash fare, and school children's tickets which are in effect two and one half cent cash fares.

We are of the opinion that the decision of the superior court should be affirmed. It is so ordered.

PARKER, *J.*

We concur:
DUNBAR, *C. J.*
MORRIS, *J.*

167 In the Supreme Court of the State of Washington. Friday, July 21, 1911.

No. 9058.

THE STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Respondent,
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corp., Appellant.

Judgment.

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 21st day of July, A. D. 1911, on motion of Scott Calhoun Esquire, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with costs, the petition for rehearing denied and that the said A. G. Linhoff have and recover of and from the said Seattle, Renton & Southern Railway Co., a corp., and from the National Surety Co., surety the costs of this action taxed and allowed at Sixty-four & 50/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

168 In the Supreme Court of the State of Washington.

No. 9058. At Law.

THE STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Respondent,
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, Appellant.

The petition of the Seattle, Renton & Southern Railway Company by Morris B. Sachs and Will H. Thompson, attorneys, hereby

sets forth that on or about the 21st day of July, 1911, the Supreme Court of the State of Washington made and entered a final order and judgment herein in favor of the State of Washington ex rel. A. G. Linhoff and against the Seattle, Renton & Southern Railway Company, in which final order and judgment and proceedings had prior thereunto in this cause certain errors were committed to the prejudice of the Seattle, Renton & Southern Railway Company, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That the Supreme Court of the State of Washington is the highest court of the State of Washington in which a decision in this suit and this matter could be had.

Wherefore, Seattle, Renton & Southern Railway Company petitions and prays that a writ of error from the Supreme Court of the United States issue in this behalf to the Supreme Court of the State of Washington for the corrections of errors so complained of, and that a transcript of record, proceedings, and papers in this
160 cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 26th day of July, 1911.

MORRIS B. SACHS AND
WILL H. THOMPSON,
Attorneys for Seattle, Renton & Southern Ry. Co.

The writ of error as prayed for in the foregoing petition is hereby allowed this 2nd day of August A. D., 1911, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of $10,000.00. Dated at Olympia this 2nd day of August, A. D. 1911.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

Filed in my office this — day of —, A. D. 1911.

———,
Clerk Supreme Court of the State of Washington.

Endorsed: No. 9058. State ex rel. A. G. Linhoff, respondent, Defendant in error, vs. Seattle, Renton & So. Ry. Co., a corporation, Appellant, Plaintiff in error. Petition for Writ of Error. Filed Aug. 2, 1911. Will H Thompson and Morris B. Sachs, Att'ys for Plaintiff in Error.

170 In the Supreme Court of the State of Washington.

9058.

THE STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Respondent,
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, Appellant.

Order Allowing Writ of Error.

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme court of the United States to the Supreme Court of the State of Washington, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter;

It is ordered that a writ of error be, and is hereby, allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

Endorsed: No. 9058. State ex rel. A. G. Linhoff, Respondent, Defendant in Error, vs. Seattle, Renton & So. Ry. Co., Appellant, Plaintiff in error. Order Allowing Writ of Error. Filed Aug. 2, 1911. C. S. Reinhart, Clerk. Will H. Thompson and Morris B. Sachs, Att'ys for Plaintiff in Error.

171 In the Supreme Court of the State of Washington.

9058.

THE STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Respondent, Defendant in Error,
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, Appellant, Plaintiff in Error.

Assignment of Errors.

Now comes the said Seattle, Renton & Southern Railway Company, plaintiff in error, and respectfully submits that in the record, proceedings, decision, and final judgment of the Supreme Court of the State of Washington, in the above matter there is manifest error in this, to-wit:

1. The court erred in holding that under the provisions of Ordinance No. 15919 of the City of Seattle, evidencing the franchise contract between the Seattle, Renton & Southern Railway Company, plaintiff in error, and the City of Seattle requiring the plaintiff in error to issue and receive transfers to and from the Seattle Electric Company upon a basis of redemption of fifty per cent to each of said companies of a five-cent fare, does not deprive the plaintiff in error of its property without due process of law, and contrary to the constitution of the United States.

2. The court erred in holding that requiring the plaintiff in error to give or receive transfers on any other basis than the basis set forth in Ordinance No. 15919, to-wit: "On the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on
172 which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received," would not take from the railway company, plaintiff in error, its property without due process of law and contrary to the constitution of the United States.

3. The court erred in refusing to remand this case upon the motion of plaintiff in error, supported by affidavit, which affidavit set forth as follows:

"That since the judgment was rendered and entered in the Superior Court of King County, Washington, in this cause, and since the appeal therefrom to this court, and since the filing of the transcript and statement of facts in this court, and since the serving and filing of appellant's brief herein, on or about the 3rd day of October, 1910, the contract which is the subject matter of this action, between the appellant, Seattle, Renton & Southern Railway Company, and the City of Seattle, a municipal corporation, as evidenced by ordinance of the City of Seattle No. 15919, entitled "An Ordinance granting to William R. Crawford, his successors and assigns, a franchise to construct, maintain and operate a system of street railways in the City of Seattle' insofar as the provisions of Sections 2 and 4 are concerned, has been abrogated, set aside and has ceased to exist, and a new and different contract has been made and entered into between the City of Seattle and this appellant, which new contract is evidenced by Ordinance No. 25038, entitled "An Ordinance amending Sections 2 and 4 of Ordinance No. 15919, entitled 'An Ordinance granting to William R. Crawford, his successors and assigns, a franchise to construct, maintain and operate a system of street railways in the City of Seattle,' passed the City Council April
22d, 1907, and became an ordinance pursuant to Section 16 of
173 Article 4 of the City Charter, May 6, 1907, accepted May 20, 1907, made, entered into and enacted by the said City of Seattle and the terms thereof accepted by this appellant and the same has ever since been and now is the existing contract by and between the said City of Seattle and this appellant in lieu of and superseding the terms and contractual provisions contained in said Sections 2 and 4 of the aforesaid Ordinance No. 15919, and ever since the passage and enactment of the said Ordinance No. 25038

and acceptance thereof on or about October 3, 1910, this appellant has continued to operate and is now operating its railway under and by virtue of the terms and provisions of the said contract evidenced by Ordinance No. 25038, in good faith accepted and complying with the terms and provisions thereof, and since on or about said 3rd day of October, 1910, has not operated or maintained its said line of railway under or pursuant to the provisions of said Sections 2 and 4 of Ordinance No. 15919:

"That the sole controversy in this cause relates to the rights of the relator, if any, to have and obtain transfers under the provisions of the paragraph in Section 4 of Ordinance No. 15919 relating to transfers:

"That after the making and entering of the judgment in this cause in the court below, and after the appeal herein had been perfected and said cause was pending in this court, the parties to said contract as evidenced by Ordinance No. 15919 aforesaid, to-wit, the City of Seattle, a municipal corporation of the first class of the State of Washington, and the appellant, the Seattle, Renton & Southern Railway Company, the assignee and successor in interest of the said William R. Crawford, in and to all the contractual terms, conditions and rights contained in, granted by and evidenced by Ordi-
174 nance No. 15919, began negotiations for changing Sections 2 and 4 of said contract as evidenced by Ordinance No. 15919, and in consequence of said negotiations meetings were held between said parties and at said meetings A. L. Valentine, the Superintendent of Public Utilities of said City, made a demand upon the said authorities of said city to amend said Section 4 of said Ordinance No. 15919, among other things the paragraph in said section relating to transfers between the appellant's line of railway and other lines of railway within the City of Seattle, and that such paragraph be amended and the contract be made to require the appellant to interchange transfers with all other lines of railway in the City of Seattle upon an equal division of the fares paid and received, that this matter regarding said transfer provision was fully gone over and discussed and thereafter the said public authorities of the City of Seattle demanded that this appellant accept such contract amending said Section 4 of said Ordinance No. 15919 with the terms and provisions in the transfer section therein as demanded by said Superintendent of Public Utilities:

"That the appellant railway company declined and refused to accept or enter into a contract containing any provision of transfers requiring it to give and receive transfers from or to any other lines within the City of Seattle requiring the appellant company to divide the fares paid and received on a fifty per cent division of said fares, and that thereupon and thereafter the said authorities of the City of Seattle agreed with this appellant not to insist upon, but to forego and did cease to insist upon, and did forego, the demand for such equal division, and did thereupon and thereafter make and enter into a new contract with appellant evidenced by Ordinance No. 25038 aforesaid." And the court erred in holding that such
175 contract, evidenced by Ordinance No. 15919 was not amended as far as Section 4 thereof is concerned, relating to transfers,

by Ordinance No. 25038, and that by such Ordinance No. 25038 the contract between the plaintiff in error and the City of Seattle relating to transfers, as shown in said Ordinance No. 15919, did not receive the construction by the legislative body of the City of Seattle, to-wit: the city council thereof, and that the provisions of said Ordinance No. 15919, as amended by said Ordinance No. 25038, with such legislative construction which requires the issuance and redemption of transfers by the plaintiff in error and the Seattle Electric Company upon a division of the fare received on a fifty per cent basis, would not deprive the plaintiff in error of its property without due process of law and contrary to the constitution of the United States.

4. The court erred in holding that the provisions of said Ordinance No. 15919, as amended by Ordinance No. 25038, with the said legislative construction and interpretation would not deprive the plaintiff in error of its property without due process of law and contrary to the constitution of the United States, which required a division of the fare paid upon any other basis than that set out in Ordinance No. 15919, as amended by Ordinance No. 25038, which basis is as follows: "On the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received."

5. The court erred in holding that plaintiff in error was required to issue and redeem from the Seattle Electric Company transfers on any other division than a division based upon the mileage of
176 the two cars on which the passenger alighted from and entered upon did not take from the plaintiff in error its property without due process of law and contrary to the constitution of the United States.

6. The court erred in holding contrary to the express legislative construction placed upon the transfer provision of Ordinance No. 15919 as amended by Ordinance No. 25038 made by the legislative body of the City of Seattle, namely: the city council, thereby depriving the plaintiff in error of its property without due process of law and contrary to the constitution of the United States.

7. The court erred in holding under the provisions of Ordinance No. 15919 as amended and interpreted and a legislative construction put upon the transfer provisions in Section 4 of said ordinance by Section 1 of Ordinance No. 25038 that the plaintiff in error was obliged to transfer with the Seattle Electric Company on an equal division of the fare received was not an impairment of the contract of plaintiff in error evidenced by said Ordinance No. 15919 as legislatively interpreted by Ordinance No. 25038 prohibited by the constitution of the United States.

The Supreme Court of the State of Washington, which is the highest court of said state in which a decision in this suit could be had, where was drawn in question said Ordinance No. 15919 of the City of Seattle as amended by Ordinance No. 25038, on the ground that requiring the plaintiff in error to issue and receive transfers on any other division as a basis for redemption than that set forth in

said ordinance so as amended, which is as follows: "On the basis of settlement that the transfer is to be redeemed at or for such a
177 proportionate part of the fare paid as the run of local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received," would be in conflict with and repugnant to Article 4 Section 1 of the constitution of the United States which declares that "No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law," rendered [illegible] against the rights specially set up and claimed by the plaintiff in error, Seattle, Renton & Southern Railway Company, under the constitution of the United States.

The Seattle, Renton & Southern Railway Company prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of Washington, and that it be prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of Washington, and that the Seattle, Renton & Southern Railway Company may be restored to all things which it has lost by occasion of the said final order and judgment; and further may have such other and further relief as may be proper and just.

Dated this 2nd day of August, A. D. 1911.

MORRIS B. SACHS AND
WILL H. THOMPSON,
Attorneys for Seattle, Renton & Southern Railway Company, Plaintiff in Error.

Endorsed: No. 9058. State ex rel. A. G. Linhoff, Respondent, Defendant in Error, vs. Seattle, Renton & So. Ry. Co., a corporation, Appellant, Plaintiff in Error. Assignment of Errors. Filed Aug. 2, 1911. C. S. Reinhart, Clerk. Will H. Thompson and Morris B. Sachs, Att'ys for Plaintiff in Error.

178 In the Supreme Court of the State of Washington.

9058.

STATE OF WASHINGTON on the Relation of A. G. LINHOFF,
Respondent,
vs.
SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation,
Appellant.

Bond on Writ of Error.

Know all men by these presents: That we, Seattle, Renton & Southern Railway Company as principal, and National Surety Company as surety, are held and firmly bound unto State of Washington

on the relation of A. G. Linhoff in the sum of Ten thousand dollars ($10,000.00) to be paid to the said obligees, their successors, representatives and assigns; and the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of August, A. D. 1911.

Whereas, the above named Seattle, Renton & Southern Railway Company, plaintiff in error, has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Washington.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his writ of error to effect and answer all costs and damages if it shall fail to make
179 good this plea, then this obligation shall be void; otherwise to remain in full force and effect.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY.

[SEAL.] By W. R. CRAWFORD, *Its President.*

NATIONAL SURETY COMPANY.

[SEAL.] By JOHN W. ROBERTS.
Resident Vice President.

Attest:

GEO. W. ALLEN.
Resident Assistant Secretary.

Signed, sealed and delivered in the presence of

M. B. SACHS.
F. J. FRIEND.

STATE OF WASHINGTON,
County of King, ss.

On this 2nd day of August, A. D. 1911, before me personally appeared W. R. Crawford, to me known to be the president of the Seattle, Renton & Southern Railway Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[NOTARIAL SEAL.] MORRIS B. SACHS.
Notary Public in and for the State of Washington, Residing at Seattle.

180 STATE OF WASHINGTON,
County of King, ss:

On this 2nd day of August, A. D. 1911, before me personally appeared John W. Roberts and Geo. W. Allen, to me known to be the Resident Vice President and Resident Assistant Secretary respectively of the National Surety Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[NOTARIAL SEAL.] A. J. TENNANT,
Notary Public in and for the State of Washington, Residing at Seattle.

Endorsed: No. 9058. State ex rel. A. G. Linhoff, Respondent, Defendant in error, vs. Seattle, Renton & So. Ry. Co., a corporation, Appellant, Plaintiff in error. Bond on Writ of Error. Filed Aug. 2, 1911. C. S. Reinhart, clerk. Will H. Thompson and Morris B. Sachs, Att'ys for Plaintiff in Error.

181 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON on the Relation of A. G. LINHOFF,
Respondent, Defendant in Error,

vs.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation,
Appellant, Plaintiff in Error.

Acceptance of Service.

We hereby acknowledge the receipt of copies of the following papers and accept service thereof

The petition in error of the Seattle, Renton & Southern Railway Company;

Order allowing writ of error in the above entitled cause, signed by R. O. Dunbar, Chief Justice of the Supreme Court of the State of Washington, and fixing the supersedeas bond in the sum of $10,000.00, filed in the office of the Clerk of the Supreme Court of the State of Washington on the 2d day of August, 1911;

Assignment of errors;

Writ of error issued by the Clerk of the Circuit Court of the United States for the Western District of Washington (a certified copy of which writ of error has been lodged with the clerk of the Supreme Court of the State of Washington for the defendant in error.)

Bond on writ of error.

All of which were on the 2d day of August, A. D. 1911, filed in the office of the clerk of the Supreme Court of the State of Washington.

SCOTT CALHOUN AND
H. D. HUGHES,
Attorneys for State ex Rel. A. G. Linhoff, Defendant in Error.

Dated Aug. 3rd 1911.

182 Endorsed No. 9058. State ex rel. A. G. Linhoff, Respondent, Defendant in Error, vs. Seattle, Renton & So. Ry. Co, appellant, plff. in Error. Acceptance of Service. Filed Aug. 5, 1911. C. S. Reinhart, Clerk. Will H. Thompson and Morris B. Sachs, Att'ys for Plff. in Error.

183 9058.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Supreme Court of the State of Washington, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the State of Washington on the relation of A. G. Linhoff, relator and Respondent, v. Seattle, Renton & Southern Railway Company, a corporation, Appellant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Seattle, Renton & Southern Railway Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 9th day of October, 1911, in the said Supreme Court, to be then and

there held, that, the record and proceedings aforesaid being inspected, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Edward D. White, Chief Justice of the said Supreme Court, the 28. day of July, in the year of our Lord one thousand nine hundred and eleven.

[Seal of the United States Circuit Court, Western District of Washington.]

SAML. D. BRIDGES,
Clerk of the Circuit Court of the United States
for the Western District of Washington.
By B. O. WRIGHT,
Deputy Clerk.

[Endorsed:] 9958 Filed Aug. 2, 1911. C. S. Reinhart, Clerk.

184 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Respondent, Defendant in Error,

vs.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, Appellant, Plaintiff in Error,

Citation to Defendant in Error.

UNITED STATES OF AMERICA, *ss.*

To State of Washington on the Relation of A. G. Linhoff, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty (60) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Washington, wherein Seattle, Renton & Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. R. O. Dunbar, Chief Justice of the Supreme Court of the State of Washington, this 2nd day of August (A. D. 1911) in the year of our Lord one thousand nine hundred and eleven.

R. O. DUNBAR,
Chief Justice of the Supreme Court
of the State of Washington.

Copy of the within citation received this 3d day of August, A. D. 1911, and service thereof accepted.

SCOTT & CALHOUN AND
H. D. HUGHES,
Attorneys for State ex Rel. A. G. Linhoff,
Def't in Error.

184½ [Endorsed:] Original. No. 9058. In the Supreme Court of the State of Washington. State ex rel. A. G. Linhoff, Respondent, Def't in error, vs. Seattle, Renton & So. Ry. Co., Appellant, Pl'ff in error. Citation to defendant in error. Filed Aug. 5, 1911. C. S. Reinhart, Clerk. Will H. Thompson and Morris B. Sachs, att'ys for plaintiff in error, 1106 Alaska Bldg., Seattle, Washington.

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A. V. Bouillon,
Superintendent of Public Utilities,
Chairman.

M. T. Maloney,
Superintendent of Streets and Sewers.

R. H. Thomson,
City Engineer.

Francis W. Grant,
Superintendent of Buildings.

L. B. Youngs,
Superintendent of Light and Water Works.

C. B. Bagley, Secretary.

DEPARTMENT OF PUBLIC WORKS OF THE CITY OF SEATTLE.

OFFICE OF SUPERINTENDENT
OF PUBLIC UTILITIES.
September 18, 1908.

Seattle, Renton & Southern Railway Company, Seattle, Washington.

GENTLEMEN: There is transmitted herewith copy of statement prepared by this office showing proportionate lengths of street railways of the Seattle, Renton & Southern Railway Company and the Seattle Electric Company to and from various transfer points. You will please note that the resultant average percentages for all lines are 39½% for the Seattle, Renton & Southern Railway Company and 60½% for the Seattle Electric Company,—this on the assumption that an equal number of transfers would be issued from your Hillman City and Orchard Beach cars and that said transfers would be distributed equally to all of the lines of the Seattle Electric Company to which transfers could be issued as per our statement. If a greater proportion of transfers were to be issued to the longer lines of the Seattle Electric Company, your proportion would become less and their's more and vice versa if the greater proportion of transfers were to be issued to the shorter lines.

With the exception of possible errors the statement represents our understanding of the transfer provision of the Crawford franchise, Ordinance No. 15919, and I beg to ask that you will kindly give your consideration to said statement as a proposed basis for an exchange of transfers, the Companies to be compensated for each transfer issued according to the respective percentages of the
186 lengths of the routes, or, it is suggested that the Companies might reach an agreement as to a flat rate of compensation to each.

For your further information there is transmitted herewith a copy

of letter of even date on the above subject to the Seattle Electric Company and I would suggest that you confer with the said Company with a view to an agreement as to a basis for an exchange of transfers that would be satisfactory to both sides.

Respectfully,

A. V. BOUILLON,
Superintendent.

C. A. V. B.
Enclosures (2).

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A. V. Bouillon,
Superintendent of Public Utilities,
Chairman.

M. T. Mahoney,
Superintendent of Streets and Sewers.

R. H. Thomson,
City Engineer.

Francis W. Grant,
Superintendent of Buildings.

L. B. Youngs
Superintendent of Light and Water Works.

C. B. Bagley, Secretary.

DEPARTMENT OF PUBLIC WORKS OF THE CITY OF SEATTLE
OFFICE OF SUPERINTENDENT
OF PUBLIC UTILITIES.
September 18, 1908.

Seattle Electric Company, Mr. Jacob Furth, President, Seattle, Washington.

GENTLEMEN: Referring to previous correspondence relative to exchange of transfers with the Seattle, Renton & Southern Railway Company, I transmit herewith and submit for your consideration a statement prepared by this office showing proportionate lengths of street railways of the Seattle, Renton & Southern Railway Company and the Seattle Electric Company to and from various transfer points. This statement was prepared to determine the difference if any, between the basis of an exchange of transfers outlined in the Crawford franchise, according to our understanding of it, and that specified in the Seattle Electric Company's franchises. You will please note that on the assumption that transfers would be issued equally from the Hillman City and Orchard Beach cars to all of the connecting lines of the Seattle Electric Company, the average percentage of compensation on the basis of the Crawford franchise would be 59½% for the Seattle, Renton & Southern Railway Company and 40½% for the Seattle Electric Company. I request that you will kindly study over the statement herewith leaving you to judge as to what in practice might be your percentage. If transfers were issued from the Seattle, Renton & Southern Railway Company cars to cars operated on your longer lines in greater proportion to those operated on the shorter lines, your share would, of course, be greater
188 than 40½%, and might even exceed 50%, but if the greater proportion of transfers were to be issued to the shorter lines

your system, then your proportion of the aggregate fares would less than 10[illegible]%. From this statement the Company should be le to determine closely what its proportion would be on the basis of Crawford franchise and I would ask you to let me know, after ving the subject your further consideration, whether or not you uld agree to a basis for an exchange of transfers, either as out- ed by the statement herewith or on a flat percentage basis, such as average determined by our statement, or on any other flat per- ntage basis under 50%, that you might determine, by studying the closed statement, to be fair and equitable.

The schedule represented by this statement represents, with the ex- ption of possible errors, our understanding of the basis for an ex- ange of transfers contemplated by the Seattle, Renton and South- n Railway Company franchise. Before the statement is adopted it uld be checked by the Companies.

I transmit herewith for your information copy of letter of even te on the above subject to the Seattle, Renton & Southern Rail- y Company. Please note suggestion to said Company to confer th your Company with a view to an agreement as to a basis for an change of transfers that would be satisfactory to both sides.

Respectfully, A. V. BOUILLON.

C. A. V. B.
Enclosures (2).

SEATTLE, WASHINGTON, *September* 4, 1908.

Statement Showing Proportionate Lengths of Routes of Street Railways of the Seattle, Renton & Southern Railway Company and the Seattle Electric Company to and from Various Transfer Points.

Transfer Point.	S., R. & So. Ry. Co. Route.	Dist.	Percent.	S. E. Co. Same.	Percent.	Dist.	Route.
14th Ave. & Jackson	Hillman City	19800	77	25700	23	5900	Jackson St.
" " " "	Orchard Beach	27250	82	33150	18	5900	" "
14th Ave. & Jackson	Hillman City	19800	56	35200	44	15400	Mt. Baker Pk.
" " " "	Orchard Beach	27250	64	42652	36	15400	" " "
12th Ave. & Wash	Hillman City	21050	78	27050	22	6000	Main St.
" " " "	Orchard Beach	28500	83	34500	17	6000	Main St.
12th Ave. & Wash	Hillman City	21050	55	38400	45	17350	Madrona Pk.
" " " "	Orchard Beach	28500	62	45850	38	17350	Madrona Pk.
12th Ave. & Wash	Hillman City	21050	70	29900	30	8850	E. Jefferson.
" " " "	Orchard Beach	28500	76	37350	24	8850	E. Jefferson.
12th Ave. & Wash	Hillman City	21050	66	31800	34	10750	E. Union St.
" " " "	Orchard Beach	28500	73	39250	27	10750	E. Union St.
12th Ave. & Wash	Hillman City	21050	59	35550	41	14500	19th Ave.
" " " "	Orchard Beach	28500	66	43000	34	14500	19th Ave.
12th Ave. & Wash	Hillman City	21050	61	34600	39	13550	Capitol Hill.
" " " "	Orchard Beach	28500	68	42050	32	13550	Capitol "
12th Ave. & Wash	Hillman City	21050	72	29150	28	8100	Yesler Way.
" " " "	Orchard Beach	28500	78	36600	22	8100	Yesler Way.
12th Ave. & Wash	Hillman City	21050	63	33450	37	12400	Madison St.
" " " "	Orchard Beach	28500	70	40900	30	12400	Madison St.

12th Ave. & Wash.	Hillman City	24050	49	43800	54	22750	23rd Ave.
" " " "	Orchard Beach	28500	56	51250	44	22750	23rd Ave.
9th Ave. & Wash.	Hillman City	22050	66	32300	34	11250	Beacon Hill.
" " " "	Orchard Beach	29500	72	40750	28	11250	Beacon Hill.
9th Ave. & Wash.	Hillman City	22050	72	30800	28	8750	Broadway.
" " " "	Orchard Beach	29500	77	38250	23	8750	Broadway.
9th Ave. & Wash.	Hillman City	22050	58	38300	42	16250	Bdw'y & Pike
" " " "	Orchard Beach	29500	64	45750	36	16250	Bdw'y & Pike.
9th Ave. & Wash.	Hillman City	22050	56	39400	44	17350	Madrona Pk.
" " " "	Orchard Beach	29500	63	46850	37	17350	Madrona Pk.
9th Ave. & Wash.	Hillman City	22050	55	39650	45	17600	Madison St.
" " " "	Orchard Beach	29500	63	47100	37	17600	Madison St.

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9th Ave. & Wash.	Hillman City	22050	62	35550	38	13500	Capitol Hill.
" " " "	Orchard Beach	29500	69	43000	31	13500	Capitol Hill.
4th Ave. & Wash.	Hillman City	24000	35	68750	65	44750	University.
" " " "	Orchard Beach	31450	41	76200	59	44750	University.
4th Ave. & Wash.	Hillman City	24000	42	56800	58	32800	Wallingford.
" " " "	Orchard Beach	31450	49	64250	51	32800	Wallingford.
4th Ave. & Wash.	Hillman City	24000	55	43800	45	19800	19th Ave.
" " " "	Orchard Beach	31450	62	51250	38	19800	19th Ave.
4th Ave. & Wash.	Hillman City	24000	58	41300	42	17300	Capitol Hill.
" " " "	Orchard Beach	31450	65	48750	35	17300	Capitol Hill.
2nd Ave. & Wash.	Hillman City	24650	35	69650	65	45000	Green Lake.
" " " "	Orchard Beach	32100	42	77100	58	45000	Green Lake.
2nd Ave. & Wash.	Hillman City	24650	41	59450	59	34800	Meridian Ave.
" " " "	Orchard Beach	32100	48	66900	52	34800	Meridian Ave.
2nd Ave. & Wash.	Hillman City	24650	66	37150	34	12500	Lake Union.

Transfer Point	S. R. & So. Ry. Co. Route.	Dist.	Percent.	Sum.	Percent.	S. E. Co. Dist.	Route.
" " " "	Orchard Beach.....	32100	72	44600	28	12500	Lake Union.
2nd Ave. & Wash.....	Hillman City.....	24650	56	44100	44	19450	B'dw'y & Pike.
" " " "	Orchard Beach.....	32100	62	51550	38	19450	B'dw'y & Pike.
2nd Ave. & Wash.....	Hillman City.....	24650	67	36300	33	11950	Bellevue-Summit.
" " " "	Orchard Beach.....	32100	73	44050	27	11950	Bellevue-Summit.
2nd Ave. & Wash.....	Hillman City.....	24650	55	44500	45	19850	N. Q. Anne.
" " " "	Orchard Beach.....	32100	62	51950	38	19850	N. Q. Anne.
2nd Ave. & Wash.....	Hillman City.....	24650	45	55300	55	30650	So. Park.
" " " "	Orchard Beach.....	32100	51	62750	49	30650	So. Park.
Occidental & Wash.....	Hillman City.....	24950	58	42650	42	17700	Renton I. U.
" " "	Orchard Beach.....	32400	65	50100	35	17700	Renton I. U.
Occidental & Wash.....	Hillman City.....	24950	58	42650	42	17700	Tacoma I. U.
" " "	Orchard Beach.....	32400	65	50100	35	17700	Tacoma I. U.
1st Ave. & Wash.....	Hillman City.....	25250	40	63450	60	38200	Ballard Beach.
" " " "	Orchard Beach.....	32700	46	70900	54	38200	Ballard Beach.
1st Ave. & Wash.....	Hillman City.....	25250	43	59300	57	34050	Fort Lawton.
" " " "	Orchard Beach.....	32700	49	66750	51	34050	Fort Lawton.
1st Ave. & Wash.....	Hillman City.....	25250	36	69450	64	44200	Fauntleroy Park.
" " " "	Orchard Beach.....	32700	43	76900	57	44200	Fauntleroy Park.
1st Ave. & Wash.....	Hillman City.....	25250	42	60450	58	35200	Luna Park.
" " " "	Orchard Beach.....	32700	48	67900	52	35200	Luna Park.
1st Ave. & Wash.....	Hillman City.....	25250	41	60900	59	35650	Ballard (Old).
" " " "	Orchard Beach.....	32700	48	68850	52	35650	Ballard (Old).
1st Ave. & Wash.....	Hillman City.....	25250	43	58850	57	33600	Ballard (New).
" " " "	Orchard Beach.....	32700	49	66300	51	33600	Ballard (New).
1st Ave. & Wash.....	Hillman City.....	25250	42	60400	58	35450	Fremont-Ball.
" " " "	Orchard Beach.....	32700	48	67850	52	35450	Fremont-Ball.

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1st Ave. & Wash....	Hillman City.....	25250	47	54000	53	28750	Fremont Ave.
" " " "	Orchard Beach.....	32700	53	61450	47	28750	Fremont Ave.
1st Ave. & Wash.....	Hillman City.....	25250	68	37050	32	11800	Virginia St.
" " " "	Orchard Beach.....	32700	73	44500	27	11800	Virginia St.
1st Ave. & Wash.....	Hillman City.....	25250	58	43400	42	18150	Kinnear Pk.
" " " "	Orchard Beach.....	32700	64	50850	36	18150	Kinnear Pk.
1st Ave. & Wash.....	Hillman City.....	25250	52	48200	48	22950	W. Q. Anne.
" " " "	Orchard Beach.....	32700	59	55650	41	22950	W. Q. Anne.
1st Ave. & Wash.....	Hillman City.....	25250	81	31150	19	5900	1st Ave. So. to Walker St.
" " " "	Orchard Beach.....	32700	85	38600	15	5900	1st Ave. So. to Walker St.
1st Ave. & Wash.....	Hillman City.....	25250	86	29250	14	4000	E. Q. Anne connecting with N. Q. Anne.
" " " "	Orchard Beach....	32700	89	36700	11	4000	E. Q. Anne connecting with N. Q. Anne.
Total of percentages.....			5122		3478		

Average percentage for Seattle, Renton & Southern Railway Company..... 59 1/2%
Average percentage for Seattle Electric Company..... 40 1/2%

Endorsed: 71874. Department No. 5. Seattle Renton & S. R. R. Co. Defendant's Exhibit 1. Respondent Seattle Renton &c. Exhibit No. 1. Filed Feb. 17, 1910. D. K. Sickles, Clerk. W. A. H.

192 9058.

Alki Point Route.

Beginning at the intersection of Yesler way and First Avenue; running thence along Yesler way to Occidental Avenue (Ord. 10424); thence along Occidental Avenue to Jackson Street (Ord. 5277); thence along Jackson Street to First Avenue South (Ord. 9035); thence along First Avenue South to Spokane Avenue (Ord. 7499); thence along West Spokane Avenue, and White Avenue to West Lander Street (County Franchise); thence along White Avenue, Railroad Avenue West and Alki Avenue to Illinois Street (West Seattle Ord. 148); thence along Alki Avenue and Sixty-third Avenue Southwest to the intersection of Alki Avenue and West Spokane Avenue; thence along and upon the road forming the southerly continuation of Alki Avenue to a point 500 feet southerly of the south line of the plat of Alki Point (Ord. 18572).

Filed Sep. 10, 1910. C. S. Rinehart, Clerk. B.

193 Aloha Street Route.

Beginning at the intersection of Second Avenue South and Jackson Street, running thence along and upon Jackson Street to Occidental Avenue (Ord. 5277); thence along and upon Occidental Avenue and Main Street to Second Avenue South (Ord. 9035); thence along and upon Second Avenue South and Second Avenue to Pike Street (Ord. 5874); thence along Second Avenue, Second Avenue North, Roy Street and Third Avenue North to Aloha Street (Ord. 14885); thence along Aloha Street to Fifth Avenue North (Ord. 5874).

194 Ballard Beach Route.

Beginning at the intersection of First Avenue South and Jackson Street, running thence along Jackson Street and Occidental Avenue to Main Street (Ord. 9035); thence along Main Street, First Avenue South, First Avenue, Denny Way, First Avenue West, Mercer Street, Beach Drive, Elliott Avenue, Fifteenth Avenue West, Thorndike Street, and Fourteenth Avenue West to the center line of the Salmon Bay Waterway (Ord. 5874).

Thence along Fourteenth Avenue Northwest, West Forty-seventh Street, Ballard Avenue, Market Street, and Twenty-fourth Avenue North West to West Fifty-ninth Street (Ballard Ord. 180); thence along West Fifty-ninth Street, Thirty-second Avenue Northwest, West Sixty-fourth St. to Thirty-sixth Avenue Northwest (Ballard Ordinance 1020). Ballard Ordinance 180 and 1020 became subject to Seattle Ordinance 5874 upon the annexation of the city of Ballard to the City of Seattle.

195 Ballard Sloop Street Route.

Beginning at the intersection of First Avenue South and Jackson street, running thence along Jackson Street and Occidental Avenue to Main Street (Ord. 9036); thence along Main Street, First Avenue South, First Avenue, Denny Way, First Avenue West, Mercer Street, Beach Drive, Elliott Avenue, Fifteenth Avenue West, Thorndike Street, and Fourteenth Avenue West to the center line of the Salmon Bay Waterway (Ord. 5874).

Thence along Fourteenth Avenue Northwest, West Forty-seventh street, Ballard Avenue, Market Street, and Twenty-fourth Avenue West to West Sixty-third Street (Ballard Ord. 480); thence along Twenty-fourth Avenue Northwest to West Seventieth Street (Ballard Ord. 1020); Ballard Ordinance 480 and 1020 became subject to Seattle Ordinance 5874 upon the annexation of the City of Ballard to the City of Seattle.

196 Beacon Hill Route.

Beginning at the intersection of First Avenue and Yesler Way, running thence along Yesler Way to Occidental Avenue (Ord. 10424); thence along Occidental Avenue and Jackson Street to Maynard Avenue (Ord. 5277); thence along Maynard Avenue and Weller Street to Twelfth Avenue South (By virtue of temporary permit from Board of Public Works); thence along Twelfth Avenue South, Massachusetts Street, Fourteenth Avenue South, and Beacon Avenue to Hanford Street (Ord. 5874).

197 Bellevue-Summit Route.

Beginning at the intersection of Second Avenue South and Jackson Street; running thence along Jackson Street to Occidental Avenue (Ord. 5277); thence along Occidental Avenue and Main Street to Second Avenue South (Ord. 9035) thence along Second Avenue South, Second Avenue, Pike Street, Melrose Avenue and Pine Street to Summit Avenue (Ord. 5874); thence along Summit Avenue, Belmont Avenue North, Bellevue Place, and Bellevue Avenue to Pine Street. (Ord. 15246).

198 Broadway-Pike Street Route.

Beginning at the intersection of Second Avenue South and Jackson Street, running thence along Jackson Street to Occidental Avenue (Ord. 5277); thence along Occidental Avenue and Main Street to Second Avenue South (Ord. 9035); thence along Second Avenue South, Second Avenue, and Pike Street to Melrose Avenue (Ord. 5874); thence along Pike Street to Broadway (Ord. 19778); thence along Broadway, North Broadway and Tenth Avenue North to Galer Street (Ord. 5874); thence along Tenth Avenue North, Roanoke Street, and Harvard Avenue North to an intersection with Eastlake Avenue (Ord. 12828).

199 Capitol Hill Route.

Beginning at the intersection of Third Avenue South and Jackson Street; running thence along Jackson Street to Fourth Avenue South (Ord. 5277); thence along Fourth Avenue South to Prefontaine Place (Ord. 1879); thence along Prefontaine Place to Yesler Way (Ord. 15596) thence along Third Avenue to Pike Street (Ord. 5874); thence along Third Avenue and Pine Street to Fifth Avenue (Ord. 20359); thence along Pine Street to Seventh Avenue (Ord. 5874); thence along Pine Street to Melrose Avenue (Ord. 19782); thence along Pine Street, East Pine Street, Fifteenth Avenue and Fifteenth Avenue North to East Prospect Street (Ord. 5874); thence along Fifteenth Avenue North to East Galer Street (Ord. 13988). Also beginning at the intersection of Fifteenth Avenue North and East Mercer Street and running thence along East Mercer Street, Fourteenth Avenue North and Fourteenth Avenue to East Pine Street (Ord. 9035).

200 Cedar Street & North Queen Anne Route.

Beginning at the intersection of Second Avenue South and Jackson Street, running thence along and upon Jackson Street to Occidental Avenue (Ord. 5277); thence along and upon Occidental Avenue and Main Street to Second Avenue South (Ord. 9035); thence along Second Avenue South and Second Avenue to Pike Street (Ord. 5874); thence along and upon Second Avenue to Cedar Street (Ord. 14885); thence along Cedar Street and Fifth Avenue to Fifth Avenue North to Aloha Street (Ord. 5874); thence along Aloha Street and Taylor Avenue to Highland Drive (Ord. 10672); thence along Taylor Avenue, Boston Street and Queen Anne Avenue to Ray Street (Ord. 15585).

Also beginning at the intersection of Queen Anne Avenue and McGraw Street running thence along McGraw Street to Seventh Avenue West (Ord. 20790); thence along Seventh Avenue West to Pleasant Place (Ord. 5874).

201 Eastlake Avenue Route.

Beginning at the intersection of Third Avenue South and Jackson Street, running thence along Jackson Street to Fourth Avenue South (Ord. 5277); thence along Fourth Avenue South to Prefontaine Place (Ord. 1879); thence along Prefontaine Place to Yesler Way (Ord. 15596); thence along Third Avenue to Union Street (Ord. 5874); thence along Union Street and Eighth Avenue to Pike Street (Ord. 8-54); thence along Eighth Avenue, Howell Street, Eastlake Avenue, Sixth Avenue Northeast, East Forticth Street, Fourteenth Avenue Northeast, Ravenna Boulevard, East Fifty-eighth Street, Ravenna Avenue and East Fifty-fifth Street to the City Limits at Calvary Cemetery (Ord. 5874).

202 East Queen Anne Route.

Beginning at the intersection of Queen Anne Avenue and Boston street, running thence along Queen Anne Avenue to Blaine Street (Ord. 15585); thence along Blaine Street and Second Avenue North to Cedar Street (Ord. 5874).

203 East Union Street Route.

Beginning at the intersection of First Avenue South and Jackson street, running thence along Jackson Street and Occidental Avenue to Main Street (Ord. 9035); thence along Main Street, First Avenue South and First Avenue to Pine Street (Ord. 5874); thence along Pine Street to Fifth Avenue (Ord. 20359); thence along Pine Street to Seventh Avenue (Ord. 5874); thence along Pine Street to Melrose Avenue (Ord. 19782); thence along Pine Street and East Pine Street to Fourteenth Avenue (Ord. 5874); thence along Fourteenth Avenue and East Union Street to Twenty-ninth Avenue (Ord. 9035).

204 Fauntleroy Park Route.

Beginning at the intersection of Yesler Way and First Avenue, running thence along Yesler Way to Occidental Avenue (Ord. 9024); thence along Occidental Avenue to Jackson Street (Ord. 5277); thence along Jackson Street to First Avenue South (Ord. 9035); thence along First Avenue South to Spokane Avenue (Ord. 7360); thence along West Spokane Avenue to Duwamish Avenue (Ord. 11118); thence along West Spokane Avenue, Twenty-sixth Avenue Southwest, West Andover Street, Twenty-eighth Avenue Southwest, Mary Street; thence across Private right-of-way to West Alaska Street; thence along West Alaska Street, California Avenue, West Myrtle Street, and Fauntleroy Avenue to the South City Limit at West Roxbury Street (County Franchise).

205 Fort Lawton Route.

Beginning at the intersection of First Avenue South and Jackson Street, running thence along Jackson Street and Occidental Avenue to Main Street (Ord. 9035); thence along Main Street, First Avenue South, First Avenue, Denny Way, First Avenue West, Mercer Street, Beach Drive, Elliott Avenue, and Fifteenth Avenue West to Grand Boulevard (Ord. 5874); thence along Grand Boulevard, Twentieth Avenue West, Gilman Avenue, Twenty-third Avenue West, Commodore Way, and Government Way to Fort Lawton (Ord. 12367).

206 Fremont-Ballard Route.

Beginning at the intersection of First Avenue South and Jackson Street, running thence along Jackson Street and Occidental Avenue to Main Street (Ord. 9035); thence along Main Street, First Avenue

South, First Avenue, and Pike Street to Westlake Avenue (Ord. 5874); thence along Westlake Avenue to Denny Way (Ord. 11884); thence along Westlake Avenue North and Fremont Avenue, Ewing Street, Evanston Avenue, Kilbourne Avenue, Third Avenue North West, West Forth-first Street, and Sixth Avenue Northwest to West Forty-fifth Street (Ord. 5874); thence along West Forty-fifth Street, Ninth Avenue Northwest, West Forty-seventh Street, Ballard Avenue, Twentieth Avenue Northwest, Market Street, and Fourteenth Avenue Northwest to West Sixty-third Street (Ballard Ordinance 180); thence along Fourteenth Avenue Northwest to West Seventieth Street (Ballard Ord. 1020). Ballard Ordinances 180 and 1020 became subject to Seattle Ordinance 5874 upon the annexation of the city of Ballard to the city of Seattle.

207 Georgetown Route.

Beginning at the intersection of Second Avenue South and Yesler Way, running thence along Second Avenue South to Main street (Ord. 5874); thence along Second Avenue South to Jackson Street (Ord. 9035); thence along Jackson Street to Maynard Avenue (Ord. 5277); thence along Maynard Avenue to its intersection with Seattle Boulevard (By virtue of temporary permit of Board of Public Works); thence along Seattle Boulevard to Plummer Street (Ord. 7015); thence along Seattle Boulevard, Ninth Avenue South, Seattle Boulevard, and Eight Avenue South to the South City Limits at Argo (Ord. 1879).

208 Green Lake Route.

Beginning at the intersection of Second Avenue South and Jackson Street, running thence along and upon Jackson Street to Occidental Avenue (Ord. 5277); thence along Occidental Avenue and Main Street to Second Avenue South (Ord. 9035); thence along Second Avenue South, Second Avenue, and Pike Street to Westlake Avenue (Ord. 5874); thence along Westlake Avenue to Denny Way (Ord. 11884); thence along and upon Westlake Avenue North and Fremont Avenue to Ewing Street (Ord. 5874); thence along Fremont Avenue, Blewett Street and Albion Place to Thirty-ninth Avenue North (Ord. 7893); thence along Woodland Park Avenue, North Fifty-fifth Street, Interlake Avenue, Green Lake Boulevard, and Aurora Avenue to the north line of Woodland Park (Ord. 5874); thence over and across Woodland Park (Ord. 7892) emerging at Woodland Park Avenue; thence upon Woodland Park Avenue and Ewing Street to a connection with the same route at Fremont Avenue (Ord. 5874).

209 James St. Cable Route.

Beginning at the East marginal line of First Avenue on James Street; running thence along and upon James Street to Broadway. (Ord. 5874).

210 Jefferson Street Route.

Beginning at the intersection of Broadway and James Street; running thence along Broadway, East Jefferson Street, 23rd Avenue and 23rd Avenue South to Jackson Street (Ord. 5874); thence along Jackson Street and 30th Avenue South to Yesler way (Ord. 5277).

210½ Kinnear Park Route.

Beginning at the intersection of First Avenue South and Jackson street, running thence along Jackson Street, Occidental Avenue, and Main Street to First Avenue South (Ord. 9035); thence along First Avenue South (Ord. 9035); thence along First Avenue South, First Avenue, First Avenue North, Harrison Street, and Queen Anne Avenue to Mercer Street (Ord. 5874); thence along Mercer Street and First Avenue West to Roy Street (Ord. 8333); thence along Roy Street, Second Avenue West, and Olympic Place to Eighth Avenue West (Ord. 5874); thence along Olympic Way and Tenth Avenue West to Crockett Street (Ord. 10373).

211 Madison Street Cable Route.

Beginning at a point in Madison Street 100 feet west of the west marginal line of Western Avenue, running thence along Madison Street to Laurel Shade Avenue (Ord. 5874).

212 Madrona-Broadway Route.

Beginning at Madrona Park and running thence along Hugo Place, Grand Avenue, East Denny Way, 34th Avenue, East Cherry Street, 21st Avenue, East Jefferson Street, Broadway, North Broadway and 10th Avenue North to East Prospect Street. (Ord. 5874).

213 Main Street Route.

Beginning at the intersection of First Avenue South and Jackson Street, running thence along Jackson Street to Occidental Avenue (Ord. 9035); thence along Jackson Street to Maynard Avenue (Ord. 5277); thence along Maynard Avenue and Weller Street to Twelfth Avenue South (By virtue of Temporary Permit from Board of Public Works); thence along Twelfth Avenue South to Main Street (Ord. 5874); thence along Twelfth Avenue South to Washington Street (Ord. 19781); thence along Twelfth Avenue South, Twelfth Avenue, East Columbia Street, and Fourteenth Avenue to East Pine Street (Ord. 9035); thence along East Pine Street, Pine Street, Melrose Avenue, Pike Street, and First Avenue and First Avenue South of Jackson Street (Ord. 5874).

214 Mt. Baker Park Route.

Beginning at the intersection of First Avenue and Yesler Way, running thence along Yesler Way to Occidental Avenue (Ord.

10424); thence along Occidental Avenue and Jackson Street to Maynard Avenue (Ord. 5277); thence along Maynard Avenue and Weller Street to Twelfth Avenue South (By virtue of temporary permit from the Board of Public Works); thence along Twelfth Avenue South to Jackson Street (Ord. 5874); thence along Jackson Street to Twenty-third Avenue South (Ord. 5277); thence along Twenty-third Avenue South, Dearborn Street, Yakima Avenue, Yakima Place, Thirtieth Avenue South, Juneau Street and Thirty-first Avenue South to Day Street (Ord. 5874); thence along Thirty-first Avenue South *to Day Street (Ord. 5874); thence along Thirty-first Avenue South*, McClellan Street and Hunter Boulevard to Hanford Street (Ord. 15218).

215 Meridian Avenue Route.

Beginning at the intersection of Third Avenue South and Jackson Street; running thence along Jackson Street to Fourth Avenue South (Ord. 5277); thence along Fourth Avenue South to Prefontaine Place (Ord. 1879); thence along Prefontaine Place to Yesler Way (Ord. 15596); thence along Third Avenue to Pike Street (Ord. 5874); thence along Third Avenue and Pine Street to Westlake Avenue (Ord. 20359); thence along Westlake Avenue to Denny Way (Ord. 14884); thence along Westlake Avenue North and Fremont Avenue to Ewing Street (Ord. 5874); thence along Ewing Street, Wallingford Avenue, North 45th St., Meridian Avenue, North 55th Street, Ladd Street, East 50th Street and Latona Avenue to East 65th Street (Ord. 15215).

216 Nineteenth Avenue Route.

Beginning at the intersection of Third Avenue South and Jackson Street; running thence along Jackson Street to Fourth Avenue South (Ord. 5277); thence along Fourth Avenue South to Prefontaine Place (Ord. 1879); thence along Prefontaine Place to Yesler Way (Ord. 15596) thence along Third Avenue to Pike Street (Ord. 5874); thence along Third Avenue and Pine Street to Fifth Avenue (Ord. 20359); thence along Pine Street to Seventh Avenue (Ord. 5874); thence along Pine Street to Melrose Avenue (Ord. 12782), thence along Pine Street and East Pine Street to Fourteenth Avenue (Ord. 5874); thence along Fourteenth Avenue and East Union Street to Nineteenth Avenue (Ord. 9035); thence along Nineteenth Avenue and Nineteenth Avenue North to East Galer Street (Ord. 15217).

217 Phinney Avenue Route.

Beginning at the intersection of First Avenue South and Jackson Street, running thence along Jackson Street and Occidental Avenue to Main Street (Ord. 9035); thence along Main Street, First Avenue South, and First Avenue and Pike Street to Westlake Avenue (Ord. 5874); thence along Westlake Avenue to Denny Way (Ord. 14884);

thence along Westlake Avenue North and Fremont Avenue to Ewing Street (Ord. 5874); thence along Fremont Avenue to Blewett Street (Ord. 7893); thence along Fremont Avenue, North Forty-third Street, Phinney Avenue, North Sixty-eighth Street, and Greenwood Avenue to North Seventy-fifth St. (Ord. 12770); thence along Greenwood Avenue to North Eighty-fifth Street (Ord. 20656).

218 South Park Route.

Beginning at the intersection of Yesler Way and First Avenue, running thence along Yesler Way to Occidental Avenue (Ord. 6424); thence along Occidental Avenue to Jackson Street (Ord. 5277); thence along Jackson Street to First Avenue South (Ord. 4635); thence along First Avenue South to Andover Street (Ord. 7490); thence along First Avenue South produced, Duwamish Avenue produced, Eighth Avenue South Produced, Bateman Street, Estella Street, and Cloverdale Avenue to 14th Avenue South. (By virtue of County Franchise).

219 Twenty-third Avenue Route.

Beginning at the intersection of Third Avenue South and Main street, running thence along Third Avenue South to Jackson Street (Ord. 15516); thence along Jackson Street to Maynard Avenue (Ord. 5277); thence along Maynard Avenue and Weller Street to Twelfth Avenue South (by virtue of temporary permit from Board of Public Works) thence along Twelfth Avenue South to Jackson Street (Ord. 5874); thence along Jackson Street to Twenty-third Avenue South (Ord. 5277); thence along Twenty-third Avenue South and Twenty-third Avenue to East Jefferson Street (Ord. 5874); thence along Twenty-third Avenue Twenty-third Avenue North, Turner Way, and Twenty-fourth Avenue North to Louisa Street (Ord. 17468); thence along Montlake Place and Montlake Boulevard to the Lake Washington Canal Waterway (Ord. 20665).

220 Wallingford Avenue Route.

Beginning at the intersection of Third Avenue South and Jackson Street; running thence along Jackson Street to Fourth Avenue South (Ord. 5277); thence along Fourth Avenue South to Prefontaine Place (Ord. 1879); thence along Prefontaine Place to Yesler Way (Ord. 15596); thence along Third Avenue to Pike Street (Ord. 5874); thence along Third Avenue and Pine Street to Westlake Avenue (Ord. 20359); thence along Westlake Avenue to Denny Way (Ord. 14884); thence along Westlake Avenue North and Fremont Avenue to Ewing Street (Ord. 5874); thence along Ewing Street, Wallingford Avenue and North 45th Street to Meridian Avenue (Ord. 15215); thence along North 45th Street to 14th Avenue Northeast (Ord. 16298).

221 West Queen Anne Route.

Beginning at First Avenue South and Walker Street, running thence along First Avenue South to Jackson Street (Ord. 7499); thence along First Avenue South, First Avenue, First Avenue North, Harrison Street, and Queen Anne Avenue to Galer Street (Ord. 5874); thence along Galer Street to Third Avenue West (Ord. 8893); thence along Galer Street and Sixth Avenue West to Crockett Street (Ord. 5874); thence upon Sixth Avenue West and McGraw Street to Seventh Avenue West (Ord. 20790); thence along Seventh Avenue West to Pay Street (Ord. 5874).

222 West Seattle Transfer Route.

Beginning at the intersection of West Alaska Street and California Avenue running thence along California Avenue to West Lander Street (County Franchise); thence along California Avenue and Ferry Avenue to West Atlantic Street (West Seattle Ord. 165).

223 Yesler Way Cable Route.

Beginning at Yesler Way and the centre line of Occidental Avenue; running thence easterly along Yesler Way to Lake Washington (Ord. 5277).

Endorsed on back: 71871 Department No. 5. Plaintiff's Exhibit B. Filed Feb. 17, 1910. D. K. Sickles, Clerk. W. V. H.

(Here follow maps marked pp. 224 & 225.)

PC

26 In the Supreme Court of the State of Washington.

No. 9058.

STATE OF WASHINGTON on the Relation of A. G. LINHOFF, Respondent,

v.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, a Corporation, Appellant.

Certificate.

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full and correct transcript of the record in the above entitled cause as the same remains on file in my office. I further certify and transmit herewith the said transcript together with the original writ of error and the original citation to the United States Supreme Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 27th day of September, 1911.

C. S. REINHART, *Clerk.*

Endorsed on cover: File No. 22,892. Washington Supreme Court. No. 107. Seattle, Renton & Southern Railway Company, plaintiff in error, vs. The State of Washington ex rel. A. G. Linhoff. Filed October 6th, 1911. File No. 22892.

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IN THE

In the Supreme Court of the United States

Office Supreme Court
FILED
DEC 1 191
JAMES D. MAHE

OCTOBER TERM, 1913.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,
vs.
THE STATE OF WASHINGTON, EX REL A. J. LINHOFF,
Defendant in Error.

No. 107.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

Brief of Plaintiff's in Error

JAMES A. KERR,
Attorney for Plaintiff in Error.
P. O. ADDRESS: HOGE BUILDING,
SEATTLE, WASHINGTON.

MECHANICS PUB. CO., 1612 Third Ave.

IN THE

In the Supreme Court of the United States

OCTOBER TERM, 1913.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY, *Plaintiff in Error,* *vs.* THE STATE OF WASHINGTON, EX REL A. J. LINHOFF, *Defendant in Error.*	No. 107.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

Brief of Plaintiff's in Error

JAMES A. KERR,
Attorney for Plaintiff in Error.
P. O. ADDRESS: HOGE BUILDING,
SEATTLE, WASHINGTON.

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IN THE

In the Supreme Court of the United States

OCTOBER TERM, 1913.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,
vs.
THE STATE OF WASHINGTON, EX REL A. J. LINHOFF,
Defendant in Error.

No. 107.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

Brief of Plaintiff's in Error

STATEMENT OF THE CASE.

This was an action instituted by A. J. Linhoff, to compel the Seattle, Renton & Southern Railway Company, and the Seattle Electric Company, to give to passengers on either line of railway, upon the payment by such passenger of five cents (5), a transfer to the other line of railway and the five cents fare so paid, by such

passenger, to be divided between the Railway Companies on a 50 per cent basis. It being claimed that the contracts of both Companies, as shown by their ordinances granted by the City of Seattle, to locate, maintain, and operate their lines of Railway within such City compelled them to give and receive transfers to and from their lines of Railway upon payment of a five cent fare, and that each Company was entitled to receive from the fare paid, 50 per cent thereof.

A mandate compelling such issuance of such transfer between the Companies on a 50 per cent division of fares was ordered by the Superior Court of King County, Washington, from which decision an appeal was taken by the Seattle, Renton & Southern Railway Company to the Supreme Court of the State of Washington, and thereafter the said Supreme Court, of the State of Washington, by a decision of Department No. 1 thereof, affirmed such decision of the lower court by a vote of 3 to 2, and thereafter the Supreme Court of the State of Washington denied a petition for a re-hearing, filed by the Seattle, Renton & Southern Railway Company.

On the 18th day of May, 1908, the Seattle, Renton & Southern Railway Company became the owner of a certain franchise evidenced by Ordinance No. 15919, granted by the City of Seattle to William R. Crawford, and by

said Crawford duly assigned to said Seattle, Renton & Southern Railway Company, and on and after May 18, 1908, and until October 3, 1910, the Seatle, Renton & Southern Railway Company's rights, privileges, and duties in the operation of its lines of Railway within the City of Seattle were under the terms and conditions of said franchise, evidenced by Ordinance No. 15919.

Some months thereafter, on September 18, 1908, A. V. Bouillon occupying the position of Superintendent of Public Utilities of the City of Seattle, vested with power and authority, under the charter of the City of Seattle, to control and supervise the Public Utilities Companies, within the limits of the City of Seattle, and with power to enforce the franchise duties and obligations granted by Ordinance of the City of Seattle, to such Utilities Companies, made an official and binding, as far as the City of Seattle was concerned, interpretation of the liabilities of the Seattle, Renton & Southery Railway Company, as evidenced by its franchise under Ordinance No. 15919, relating to the interchange of transfers between the lines of the Seattle, Renton & Southern Railway Company, and the Seattle Electric Company, and the division of the fare paid, by such transfer passengers. This interpretation was accepted by the Seattle, Renton & Southern Railway Company.

The interpretation made by said Bouillon, Superintendent of Public Utilities of the City of Seattle, of such portion of the franchise of the Seattle, Renton & Southern Railway Company, relating to transfers and the division of the fare paid, and the method of arriving at such division was and became an integral part of the Contract, and binding upon the City of Seattle.

This interpretation awarded the Seattle, Renton & Southern Railway Company, as its part of the division of the transfer fares, an average of approximately 60 per cent of the five cent fare-paid, at the time said interpretation was made.

Thereafter, upon the failure of the Seattle Electric Company to issue and receive transfers upon the basis of the franchise of the Seattle, Renton & Southern Railway Company, according to the interpretation placed upon such franchise by the said Bouillon, Superintendent of the Public Utilities, the said Seattle Electric Company claiming that its contract, with the City of Seattle, demanded the interchange of transfers with the Seattle, Renton & Southern Railway Company only on a 50 per cent division of the fare paid, this action was commenced and prosecuted by the said Linhoff, ex rel the State of Washington, to force the Seattle, Renton & Southern Railway Company to interchange transfers on the basis

of the 50 per cent division contained in the franchise of the Seattle Electric Company. The Seattle Electric Company, made a party defendant, filed its answer in such cause, admitting its willingness to issue and receive transfers upon the division of fare equal to 50 per cent of the fare paid.

After the institution of this action in the Superior Court of King County, Washington, and after the appeal had been perfected from the decision by the said Superior Court, by the Seattle, Renton & Southern Railway Company, the Seattle Electric Company not appealling, and while the said cause was pending in the Supreme Court, of the State of Wahsington, but prior to any decisions therein by the said Supreme Court, negotiations were started between the Seattle, Renton & Southern Railway Company and the City of Seattle, for the giving to the said Company by the City, of a new franchise, changing in some respects the franchise evidenced by Ordinance No. 15919. Such changes necessitating the adoption of as an entirety of Section 4 of Ordinance No. 15919, in which section the duties and obligations imposed upon the Seattle, Renton & Southern Railway Company, to interchange transfers and division of the fare paid were contained.

The City of Seattle desired to amend such section, so as to compel the Seattle, Renton & Southern Railway Company to interchange transfers with the Seattle Electric Company on a 50 per cent basis of fares. The Seattle, Renton & Southern Railway Company refused to accede to such demands of the City of Seattle, and demanded that the same contract provisions as contained in Section 4 of the original Ordinance No. 15919, as interpreted by the said Bouillon, Superintendent of Public Utilities, be re-enacted and made a part of the new ordinance.

Thereafter, on October 3, 1910, the City of Seattle duly passed and adopted an ordinance, No. 25038, entitled "An Ordinance amending Sections 2 and 4 of Oridnance No. 15919," and ever since the 3rd day of October, 1910, the Seattle Renton & Southern Railway Company has continued its operation and is now operating its Railway under and by virtue of the terms and conditions of the said contract, evidenced by Ordinance No. 25038, and it has not operated or maintained its railway lines of Railway under or pursuant to the provisions of Sections 2 and 4 of Ordinance No. 15919. That after September 18, 1908, and prior to the institution of the action by the said Linhoff in the Superior Court of King County, Washington, the Seattle, Renton & Southern Railway Company had, relying upon its contract right with the City of Seattle, as evidenced by Ordinance No. 15919, with the

interpretation placed upon Section 4 of said ordinance by the said Bouillon, Superintendent of Public Utilities, not only maintained its ines of Railway, but had expended large sums of money in betterments, extensions, and additions to its lines of railway. It built and constructed under such franchise a double track line of railway extending from Washington Street, in the City of Seattle, to Pike Street, in the City of Seattle, a distance of approximately 3800 feet, and had paved a portion of said street as required by its franchise, in order to comply with its franchise obligations under Ordinance No. 15919, thereby increasing the percentage that the Seattle, Renton & Southern Railway Company would be entitled to of the fares from transfer passengers. While the cause was pending in the Supreme Court of the State of Washington and prior to a final decision thereon by said court, the Seattle, Renton & Southern Railway Company filed and presented in the cause, to the Supreme Court, two motions; one motion prayed that the Supreme Court dismiss the appeal, upon the ground that the subject matter of the controversy had ceased to exist, the other motion was to remand the cause to the Superior Court of King County, Washington, with instructions to dismiss the action. In support of such motions the Seattle, Renton & Southern Railway Company filed an affidavit with the Supreme Court setting up the matters and

negotiations had by the Seattle, Renton & Southern Railway Company, and the City of Seattle, pertaining to and a part of the said contract, evidenced by Ordinance No. 25038.

The Supreme Court denied both of the motions and rendered a written opinion in which it was held that such changes were irrelevant to the issues presented in the case and the subject matter of the suit was in no way destroyed or modified by the Ordinance No. 25038. Thereafter, in the final decision of said cause by said Supreme Court of Washington, the said court interpreted Section 4 of Ordinance No. 25038 and based its decision on the evidence introduced at the trial of the case in the lower court, as to the provisions of Section 4 of Ordinance No. 15919, which trial was had prior to the passage and acceptance of the contract evidenced by Ordinance No. 25038.

SPECIFICATIONS OF ERRORS RELIED UPON.

1. The Court erred in holding that under the provisions of Ordinance No. 15919 of the City of Seattle, evidencing the franchise contract between the Seattle, Renton & Southern Railway Company, plaintiff in error, and the City of Ceattle, requiring the plaintiff in error to issue and receive transfers to and from the Seattle Electric Company, upon a basis of redemption of fifty per cent to each of said companies of a five cent fare, does not deprive the plaintiff in error of its property without due process of law, and contrary to the constitution of the United States.

2. The Court erred in holding that requiring the plaintiff in error to give or receive transfers on any other basis than the basis set forth in Ordinance No. 15919, to wit: "On the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid, as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received," would not take from the Railway Company, plaintiff in error, its property without due process of law and contrary to the constitution of the United States.

3. The Court erred in refusing to remand this case upon the motion of plaintiff in error, supported by affidavit, which affidavit set forth as follows:

> "That since the judgment was rendered and entered in the Superior Court, of King County, Washington in this cause, and since the appeal therefrom to this Court, and since the filing of the transcript and statement of facts in this Court, and since the serving and filing of appellant's brief herein, on or about the 3rd day of October, 1910, the contract which is the subject matter of this action, between the appellant, Seattle, Renton & Southern Railway Company, and the City of Seattle, a municipal corporation, as evidenced by ordinance of the City of Seattle No. 15919, entitled, "An Ordinance granting to William R. Crawford, his successors and assigns, a franchise to construct, maintain and operate, a system of street railways in the City of Seattle," in so far as the provisions of Sections 2 and 4 are concerned, has been abrogated, set aside, and has ceased to exist, and a new and different contract has been made, and entered into, between the City of Seattle and this appellant, which new contract is evidenced by Ordinance No. 25038, entitled "An Ordinance amending Sections 2 and 4 of Ordinance No. 15919, entitled, "An Ordinance granting to William R. Crawford, his successors, assigns, a franchise to construct, maintain, and operate a system of street railways in the City of Seattle, passed the City Council April 22, 1907, and became an Ordinance pursuant to Section 16 of

Article 4 of the City Charter, May 6, 1907, accepted May 20, 1907, made, entered into, and enacted by the said City of Seattle and the terms thereof, accepted by this appellant, and the same has ever since been and now is the existing contract by and between the said City of Seattle and this appellant, in lieu of and superseding the terms and contractual provisions contained in said Sections 2 and 4 of the aforesaid Ordinance No. 15919, and ever since the passage and enactment of the said Ordinance No. 25038, and acceptance thereof, on or about October 3, 1910, this appellant has continued to operate and is now operating its railway under and by virtue of the terms and provisions of the said contract evidenced by Ordiance No. 25038, in good faith accepted and complying with the terms and provisions thereof, and since on or about said 3rd day of October, 1910, has not operated or maintained its said line of railway under or pursuant to the provisions of said Sections 2 and 4 of Ordinance No. 15919. That the sole controversy in this cause relates to the rights of the relator, if any, to have and obtain transfers under the provisions of the paragraph in Section 4 of Ordinance No 15919 relating to transfers.

"That after the making and entering of the judgment in this cause below, and after the appeal herein had been perfected and said cause was pending in this Court, the parties to said contract as evidenced by Ordinance No. 15919, aforesaid to-wit: the City of Seattle, a municipal corporation of the first class of the State of Washington, and the

appellant, the Seattle, Renton & Southern Railway Company, the assignee and successor in interest of the said William R. Crawford in and to all the contractual terms, conditions, and rights, contained in, granted by, and evidenced by Ordinance No. 15919, began negotiations for changing Sections 2 and 4 of said contract as evidenced by Ordinance No. 15919, and in consequence of said negotiations meetings were held between said parties and at said meetings A. L. Valentine, the Superintendent of Public Utilities of said city, made a demand upon the authorities of said city to amend said Section 4 of said Ordinance No. 15919, among other things the paragraph in said section relating to transfers between appellant's line of railway and other lines of railway within the City of Seattle, and that such paragraph be amended and the contract be made to require the appellant to interchange transfers with all other lines of railway in the City of Seattle upon an equal division of the fares paid and received; that this matter regarding said transfer provision was fully gone over and discussed and thereafter the said public authorities of the City of Seattle demanded that this appellant accept such contract amending said Section 4 of said Ordinance No. 15919, with the terms and provisions in the transfer section therein as demanded by said Superintendent of Public Utilities.

"That the appellant railway company declined and refused to accept or enter into a contract containing any provision of transfers requiring it to give and receive transfers from or to any other

lines within the City of Seattle requiring the appellant company to divide the fares paid and received on a fifty per cent division of said fares, and that thereupon and thereafter the said authorities of the City of Seattle, agreed with this appellant not to insist upon, but to forego, and did cease to insist upon, and did forego, the demand for such equal division, and did thereopon and thereafter make and enter into a new contract with appellant evidenced by Ordinance No. 25038 aforesaid." And the court erred in holding that such contract, evidenced by Ordinance No. 15919, was not amended as far as Section 4 thereof, is concerned, relating to transferes, by Ordinance No. 25038, and that such Ordinance No. 25038, the contract between the plaintiff in error, and the City of Seattle, relating to transfers, as shown in said Ordinance No. 15919, did not receive the construction by the legislative body of the City of Seattle, to-wit: the city council thereof, and that the provisions of said Ordinance No. 15019, as amended by said Ordinance No. 25038 with such legislative construction which requires the issuance and redemption of transfers by the plaintiff in error and the Seattle Electric Company, upon a division of the fare received on a fifty per cent basis, would not deprive the plaintiff in error of its property without due process of law, and contrary to the constitution of the United States."

4. The Court erred in holding that the provisions of said Ordinance No. 15919, as amended by Ordinance No. 25038, with the said legislative construction and in-

terpretation would not deprive the plaintiff in error of its property without due process of law and contrary to the constitution of the United States, which required a division of the fare paid upon any other basis than that set out in Ordinance No. 15919, as amended by Ordinance No. 25038, which basis is as follows: "On a basis of settlement that the transfer is to be redeemed at or for such a proportionate part o fthe fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs, or the local route of the cars, from which the transfer is issued and which the transfer is received.

5. The Court erred in holding that plaintiff in error was required to issue and redeem from the Seattle Electric Company, transfers on any other divisions than a division based upon the mileage of the two cars on which the passenger alighted from and entered upon did not take from the plaintiff in error its property without due process of law and contrary to the constitution of the United States.

6. The Court erred in holding contrary to the express legislative construction placed upon the transfer provision of Ordinance No. 15919, as amended by Ordinance No. 25038, made by the legislative body of the City of Seattle, namely, the city council, thereby depriv-

ing the plaintiff in error of its property without due process of law and contrary to the constitution of the United States.

7. The Court erred in holding under the provisions of Ordinance No. 15919, as amended and interpreted and a legislative construction put upon the transfer provisions in Section 4 of said Ordinance by Section 4 of Ordinance No. 25038, that the plaintiff in error was obliged to transfer with the Seattle Electric Company, on an equal division of the fare received, was not an impairment of the contract of plaintiff in error evidenced by said Ordinance No. 15919, as legislatively interpreted by Ordinance No. 25038, prohibited by the constitution of the United States.

The Supreme Court of the State of Washington, which is the highest court of said state in which a decision in this suit could be had, where was drawn in question said Ordinance No. 15919, of the City of Seattle, as amended by Ordinance No. 25038, on the ground that requiring the plaintiff in error to issue and receive transfers on any other division as a basis for redemption than that set forth in said Ordinance as amended, which is as follows: "On the basis of settlement that the transfer is to be redeemed at or for such proportionate part of the fare paid as the run or local route

of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received," would be in violation and repugnant to Article 4, Section 1, of the constitution of the United States, which declares that "No state shall make or enforce laws which shall abridge the privileges of immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law," rendered judgment against the rights especially set up and claimed by the plaintiff in error, Seattle, Renton & Southern Railway Company, under the constitution of the United States.

ARGUMENT

For the convenience of the Court we set out in parallel the clauses in both the franchises of the plaintiff in error and of the Seattle Electric Company in regard to transfers:

PLAINTIFF IN ERROR.

"The payment of a cash fare or the presentation of a ticket shall entitled the passenger to a transfer to any line of any street railway company now operating within the City Limits or that may hereafter operate therein, which shall give and receive transfers to and from all the lines owned, operated or controlled by such company, to and from the lines of grantee, his successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which the transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received."

* * * * * * *

"The grantee, his successors and assigns, shall also keep on sale for $1.00 each, at his or their main office and at such other places as are reasonably convenient within the city limits, commutation tickets entitling the purchaser to twenty-five rides, **with the same privileges as in the case of a cash fare**; provided, that the grantee, his successors and assigns, shall be entitled to charge the full fare of five (5) cents upon his or their through or 'express' cars."

SEATTLL ELECTRIC COMPANY.

"On the basis of a cash redemption by each line of transfers issue by it and used on the other line at the rate of two and one-half cents for ordinary transfers, and one and one-fourth cents for school children transfers."

"The grantees, their successors and assigns, shall keep on sale for one ($1) dollar each at their main office and power stations within the city commutation tickets entitling the purchaser to twenty-five rides. Such tickets shall not be transferable nor entitle the owner to a transfer and the company may make such reasonable regulations in regard to the issue and use of the same as to enforce these provisions."

The City of Seattle and the Seattle, Renton & Southern Railway Company, could have, at any time they saw fit, changed the terms and conditions of the franchise, evidence by Ordinance No. 15919.

Under the laws of the State of Washington, the legislative body of a municipality, namely, the counsel and mayor, is vested with the sole and exclusive authority to grant franchises similar to the franchise granted by Ordinance No. 15919.

Benton vs. Seattle El. Co., 50 Wash. 156.

By the consent of the Railway Company, the City of Seattle, through its legislative body, could make any changes or amendments in the franchise, evidenced by Ordinance No. 15919, without the consent, acquiesence, or interference of any citizens of the City of Seattle.

This suit was instituted by *State Ex Rel Linhoff*, on January 31, 1910. (Transcript of Record, page 7.)

Section 2 of the findings of fact, made by the lower court, signed on March 2, 1910, finds, that the Seattle, Renton & Southern Railway Company, was operating, at such time, its lines of railway within the city limits, of the City of Seattle, under the terms and conditions of a certain Ordinance Numbered 15919. (Transcript of Record, page 32.)

An appeal was taken from the writ of mandamus, issued by the Superior Court of King County, on the 12th day of March, 1910, and a proper appeal and supersedeas bond given. (Transcript of Record, page 28.)

After such appeal had been perfected to the Supreme Court, of the State of Washington, the City of Seattle and the Seattle, Renton & Southery Railway Company decided to make some changes in the franchise, evidenced by Ordinance No. 15919, which changes would necessitate the passage, by the legislative body of the City of Seattle, of a new ordinance. Negotiations were carried on between the City of Seattle, and the Seattle, Renton & Southern Railway Company, for the making of such new contract, between the parties. All of such negotiations were entered into and carried on by the parties, after March 12, 1910, while the appeal from the writ of mandamus had been taken and was then pending in the Supreme Court of the State. Such negotiations finally resulted in the making of a new contract between the City of Seattle and the Seattle, Renton & Southern Railway Company, evidenced by Ordinance No. 25038. There could be no question whatever that the City of Seattle and the Seattle, Renton & Southern Railway Company had the entire power to enter into such new contract. Such new contract, evidenced by

Ordinance No. 25038, was an absolute repeal of Sections 2 and 4 of Ordinance No. 15919, and from the moment that such contract, evidenced by Ordinance No. 25038, became in force, Section 2 and Section 4 of Ordinance No. 15919 were no longer of any force or effect, and the writ of Mandamus, issued out of the Superior Court of King County, Washington, based solely upon the provisions of Section 4 of Ordinance No. 15919, became of no force and effect.

The attention of the Supreme Court of the State of Washington was called to such fact, by two motions filed in the cause then pending, on appeal in such Court, Department No. 2 of the Supreme Court of Washington, after oral argument had upon the two motions, setting up such facts, decided, that as the language of Section 4 of Ordinance No. 25038, was similar in all respects, regarding the transfer provision thereof, to the same part of Section 4 of Ordinance 15919, the changes made were irrelevant to the issues presented in the case then pending on appeal, and that the subject matter was in no way destroyed or even modified by the amendatory ordinance and refused to grant such motions to remand the case or order the same dismissed.

State ex rel Linhoff vs. S. R. & S. Ry Co., 62 Wash. 124.

No mention whatever was made in such opinion of the questions raised by such motions, regarding the interpretation that should be placed upon the transfer provision contained in Section 4 of Ordinance No. 25038, by evidence desired to be introduced by the Seattle, Renton & Southern Railway Company, showing that in the negotiations carried on by the City of Seattle, and the Railway Company, entering into the making of such contract, evidenced by Ordinance 25038, the entire question of the interpretation and the meaning of such portion of Section 4 of Ordinance No. 25038, regarding transfers, was settled and agreed upon by the parties to such contract, namely, the City of Seattle and the Seattle, Renton and Southery Railway Company, and that such portion of said contract was, by said parties, to be considered, as meaning exactly what the Superintendent of Public Utilities of the City of Seattle had declared the same to mean. (Transcript of Record, pages 107, 110, 111, 112, 113.)

The Charter of the City of Seattle provides:

Sec. 7 (a). (Added as an amendment March, 1908). Superintendent of Public Utilities; To EnForce Franchise Ordinances; Appointment of; Term of Office—There shall be a Superintendent of Public Utilities. He shall rigidly enforce the provisions of all franchise ordi-

nances, and the rules and regulations of the Board of Public Works relating to his department. He shall, so far as public necessity may demand, superintend all franchise construction which may be carried on, in, or across the streets of the City of Seattle. He shall from time to time present to the Board of Public Works written recommendations as to such changes or betterments which should be required to be made in the equipment of franchise companies in order to secure the comfort and safety of the public. He shall keep an accurately indexed record of all franchise work showing the time of beginning and completion. He shall keep on file in his office a series of plats drawn to scale, showing the exact position that each public utility occupies in the streets, together with sectional maps, showing the depths at or to which the same may lie, below the surface of the streets. It shall be his duty to carefully examine every application made for franchise construction in the City of Seattle, and report his recommendation on each to the Board of Public Works. In connection with the City Council he shall consider every application made to the City of Seattle, for a franchise and present his recommendations thereon in writing. He shall, under civil service rules, have control of the employment of all labor skilled or other, in his department. He shall have such other additional powers as the City Council may by

ordinance grant, and he shall perform such other duties, as the City Council or Board of Public Works may, from time to time, prescribe or direct. (Charter and Ordiances of Seattle, 19108, page 44.)

The attention of this Court is called to the fact that the Supreme Court of Washington is divided into two parts, independent of each other, and that Department 2 of the Supreme Court passed upon the motions filed in the cause than on appeal, while Department 1 of such court considered and passed upon the main case on appeal.

Department 2, of the Supreme Court, decided that Sections 2 and 4 of Ordinance No. 15919 had been amended by Sections 2 and 3 of Ordinance 25038. Department No. 1, of such Court, in passing upon the main case, in no place in the opinion, mentions either Ordinance No. 15919 or Ordinance No. 25038, but after the opinion rendered by Department 2 in passing upon the motions in such cause, Department No. 1 in the main case could only interpret the transfer provisions contained in Section 4 of Ordinance No. 25038.

The opinion rendered by the three judges of Department No. 1 of the Superior Court, of Washington, as well as the dissenting opinion of two judges, declared that the language used in Section 4 regarding the duties

and obligations imposed upon the Seattle, Renton & Southern Railway Company, to interchange transfers with other lines of railway within the City of Seattle, and the percentage of fare paid, to be entitled to be received by the Seattle, Renton & Southern Railway Company, was ambiguous and obscure. (

State ex rel Linhoff vs. Seattle, Renton & Southern Railway Company, 62 Wash. 544.

The record in this case discloses therefore, that the Supreme Court of the State of Washington, held that the language of Section 4 of Ordinance No. 25038, regarding the transfer provisions, was ambiguous and obscure, and then decided what was the interpretation to be put upon such language, using the evidence introduced in the cause in the lower court as a basis for such interpretation.

We contend that the Supreme Court of the State of Washington, after the passage of Ordinance No. 25038, was without any jurisdiction whatever to pass upon the cause then on appeal, and that the action of the Supreme Court of the State of Washington, in passing upon the appeal, was taking the property of the Seattle, Renton & Southern Railway Company, without due process of law, and contrary to the constitution of the United States.

There could be no question, that, if, the Supreme Court, of the State of Washington, had sustained the motion, made in the cause on appeal, and remanded such case to the lower court with directions to dismiss the same, and the relator Linhoff, had instituted a new action upon Section 4 of Ordinance No. 25038, the Seattle, Renton & Southern Railway Company, would have had constitutional right to introduce evidence, oral or written, to show what was the meaning of the language of such section, placed upon the same by the parties to such contract, prior to the making and execution of the same, and therefore binding upon the court.

> "The parties to the contract have agreed not only upon its terms, but also upon its construction; and it is too well settled to require any citation of authority that mere inconvenience will not warrant a court in usurping the rights of a municipal corporation to pass upon all questions of expediency and propriety within the limits of its jurisdiction. * * *"

> "For the reason that the contracting parties have agreed that the change may be made, and as it seems to be within the contract privileges of the parties, and under the authorities cited is not in law unreasonable, the judgment of the lower court is reversed, with instructions to dissolve the temporary injunction."

McGilvra vs. Seattle Electric Co., 61 Wash. 38.

"Some point is made by respondent of cotemporaneous construction or acquiesence in the contract as constructed by the city. Being satisfied that the contract is broad enough to cover the contention of the city, we shall not pursue this contention, except to say that were we doubtful as to the law it might be invoked to aid an interpretation of the contract."

Peterson vs. T. Ry. & P. Co., 60 Wash. 406.

The Seattle, Renton & Southern Railway Company, therefore, never has had any day in court or an opportunity, whatever, to defend its constitutional rights against the enforcement of Section 4 of Ordinance No. 25038, although the Supreme Court, of the State of Washington, had by its judgment, in the case, on appeal, ordered the enforcement of such Section 4 of Ordinance No. 25038, against the Seattle, Renton & Southery Railway Company, and compelled by such affirmates, the plaintiff in error, the Railway Company, to accept a fifty per cent division of the fare paid, on the interchange of transfers between the Seattle, Renton & Southern Railway Company, and the Seattle Electric Company, under the terms and conditions of Section 4 of Ordinance No. 25038, which contract was not in existence, at the time the writ of mandate was issued out of the Superior Court of King County, Washington. (Transcript of Record, pages 58, 59, 60, 61, 69, 107, 108, 110, 111, 112, 113.)

It is admitted by the counsel for the defendant in error, that by the enforcement of the transfer provisions under the writ of mandamus, namely, on a fifty per cent division of the fare paid, the Seattle, Renton & Southern Railway Company will be deprived of its property, namely, a proportion of the fare paid in excess of fifty per cent. (Transcript of Record, pages 58, 59, 60, 61 and 69.)

Also, as shown by the interpretation put upon the transfer provision by the Superintendent of Public Utilities, the Seattle, Renton & Southern Railway Company would loose nine and one-half per cent if forced to transfer on a fifty per cent basis. (Transcript of Record, page 108.)

And futrher, since the table, prepared by said Bonillon, showing the relative percentages of divisions of such fare according to the local routes, then existing at the time of the report, additional per cent would be added to the per cent shown in such finding to be allowed to the Seattle, Renton & Southern Railway Company, on account of a track increase of 3800 feet. (Transcript of Record, page 64.)

We desire to call special attention of this court to the fact that nearly two years had elapsed after the interpretation of the language of Section 4 of Ordinance

No. 15919, made by the parties thereto, before the institution of the suit by Linhoff, relator, and that during such time the Seattle, Renton & Southern Railway Company, relying upon the interpretation made of the language of Section 4 of Ordinance No. 15919, had spent large amounts of money in the betterments, improvements, and additions to its lines of railway within the city limits of the city, and further, that after the bringing of this action and the decision of the lower court in March, 1910, the parties to such contract, the City of Seattle, and the Seattle, Renton & Southern Railway Company, immediately commenced negotiations for the abrogation and annullment of such judgment of the lower court, by the adoption of a new contract, with the interpretation of the language used therein, fully determined and agreed upon by the parties to such contract. Such interpretation by such parties, under such circumstances, would be and is absolutely controlling upon the courts.

> "The rate of fare had been fixed in the ordinance of July 9, 1875, and, if it was intended to change it, it would seem clear that the parties would have entered into new negotiations concerning it, and would have adopted, if that was desirable, some definite measure concerning it. The ordinance of July 9, 1875, was not attempted to be repealed, and is referred to in Section 8 of the ordinance of Sep-

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IN THE

SUPREME COURT

OF THE

United States

OCTOBER TERM, 1913

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF WASHINGTON, EX REL. A. J. LINHOFF,
Defendant in Error.

File No. 22892
Term No. 107

In Error to the Supreme Court of the State of Washington.

Brief of Defendant in Error

WILLIAM B. ALLISON,
Attorney for Defendant in Error.

JAMES E. BRADFORD,
HOWARD A. HANSON,
RALPH S. PIERCE,
Of Counsel.

Office and P. O. Address: 732 Central Bldg., Seattle, Wash.

SHILEY LITHO. & PRINTING CO., 72 COLUMBIA ST., SEATTLE, WASH.

tember 19, 1890, 'as the same as has been amended, and as now in force,' and adopted, 'so far as applicable,' concerning the things mentioned in Section 8.' "

Minneapolis vs. Minneapolis Street R. Co., 50 Law Ed., 259 (271); 215 U. S. 415.

The Supreme Court of the United States in the case of *United States vs. Cerecedo Hermanos Y Compania*, 209, U. S. 337, 52 Law Ed. 821, held:

"Great weight should be given to the construction placed by the department charged with its execution upon a statute whose meaning is doubtful."

Again, in the case of *Union Insurance Company vs. John Blair Hoge*, 62 U. S. 35, 16 Law Ed. 61, the Supreme Court of the United States held:

"The construction of the New York insurance act of 1849 by the public officer of the state that the charter is in accordance with it, should be regarded as decisive in a case of doubt."

Again, in the case of *Hahn vs. United States*, 107 U. S. 402, 27 Law Ed. 527, the Supreme Court of the United States held:

"Regarding the statute as ambiguous, all the circumstances of the case were such as to justify the application of the principle of interpretation

sanctioned by this court * * * that, 'in the case of doubtful and ambiguous law, the contemporaneous construction of those who have been called upon to carry it into effect is entitled to great respect.''

And said court refused to interfere with such construction.

Again, in the case of *United States vs. Moore*, 95 U. S. 760, 24 Law Ed. 588, the Supreme Court of the United States held:

> ''The construction of a statute by those charged with the duty of executing it, ought not to be overruled without cogent reasons.''

To the same effect are:

Smythe vs. Fiske, 90 U. S. 374, 23 Law Ed. 47;

Stuart vs. Laird, 1 Cranch 300, 2 Law Ed. 115;

Brown, Admr. vs. U. S., 113 U. S. 568, 28 Law Ed. 1079;

Pennoyer vs. McConnaughey, 140 U. S. 1, 33 Law Ed. 363.

In the case of *United States vs. G. Falk and Brother*, 204 U. S. 143, at page 52, 51 Law Ed. 411, at page 414, the Supreme Court of the United States says:

> ''The question now is not what rate of duty merchandise is subject to, or whether it is exempt from duty, but at what date its weight is to be

taken as a basis of duty. And weight is a fact independent of duty. The proviso of Section 20 of the custom administrative act, therefore, cannot be made paramount to the proviso in Section 33 of the tariff act of 1897. Nor was that the purpose of its enactment. It was enacted to nullify the effect of the decision of the circuit court in *Nosle vs. Bidwell*, by which Section 20 was construed to require the payment of duties which had accrued at the time of importation, notwithstanding a change of rates or that the goods had become exempt from duty before their withdrawal from warehouse."

In *United States vs. Cerecedo Hermanos Y Compania*, 209 U. S. 337, 52 Law ED. 821, the Supreme Court says:

> "And we have decided that the en-enactment by Congress, without change, of a statute which had previously received long-continued executive construction, is an adoption by Congress of such construction."
>
> *United States vs. G. Falk & Bro.*, 204 U. S. 143, 51 Law Ed. 411, 414, 27 Sup. Ct. Rep. 191.

Otherwise, contracts fully interpreted as to the meaning thereof, by the parties to such contracts, could be absolutely abrogated and the interpretation of the contracting parties would be ignored and contracts made by the courts substituted for those made by the parties, which the record in this cause discloses took place in this cause.

In the present case, the Supreme Court of Washington has not interpreted any franchise provisions but has made an absolutely new contract, between the Seattle, Renton & Southern Railway Company, and the City of Seattle. An examination of the transfer provisions, set out in the commencement of this argument, shows conclusively that the Supreme Court of the State of Washington as well as the lower court, impressed upon the Seattle, Renton & Southern Railway Company, the contract provisions of the Seattle Electric Company's contract with the City of Seattle. We desire to call the court's attention to the language used in the opinion of the Supreme Court of the State of Washington, "We would be glad to hold with the relator, for nothing can "work greater hardship and inconvenience to the public "than two lines of street railway, operating in the same "community but denying the right of transfers." * * * "Courts cannot make contracts or supply omis- "sions in contracts or bind one company by the contract "of the other. It may be that, at the time the franchise "was granted to the Traction Company, the city pur- "posely waived the right it might have retained to com- "pel transfers with other lines, but whether the omission "comes through design or oversight, the law is the "same."

State Ex Rel Tacoma vs. Tacoma R. & P. Co., 61 Wash. 510, 514.

There was introduced in evidence by the plaintiff, in the trial court, a statement showing the division of the lines of the Seattle Electric Company into various routes, such routes being made by the provisions of the ordinances granting franchises to the Seattle Electric Company. (Transcript of Record, pages 114 to 122, inclusive.)

An examination of the statement mentioned in the letters of Bouillon, Superintendent of Public Utilities, to the Seattle, Renton & Southern Railway Company, and the Seattle Electric Company (Transcript of Record, pages 107, 108, 109) shows that said Bouillon in such statement named the routes from different transfer points where the lines of the Seattle, Renton & Southern Railway Company and the Seattle Electric Company connected, or crossed. (Transcript of Record, pages 110, 111, 112, 113.)

The franchise of the Seattle Eectric Company, evidenced by Ordinance No. 5874, which is the first ordinance ever granted to the Seattle Electric Company, and introduced in evidence by the plaintiff in the trial court, sets out in Section 2 the routes over which the Seattle

Electric Company was given authority to build, construct, maintain, and operate its system of railways.

These routes and the routes mentioned in the transfer provision of the ordinance granting the franchise to the Seattle, Renton & Southern Railway to construct, maintain, and operate its lines of railways, and there is the mileage on these routes, that determines, as far as the Seattle Eeletric Company is concerned, what would be their percentage of the fare paid, compared not to the mileage of the line of railway, within the city limits of the City of Seattle, of the Seattle, Renton & Southern Railway Company, but of the local runs of cars of such company, operated over its said line of railways. The evidence shows that the Seattle, Renton & Southern Railway Company operates a single line of railway, within the city limits, of aproximately seven miles and that on such lines of railway it operates cars that do not run the entire length thereof, so that the words in the franchise, "a local run or routes in the case of the Seattle, Renton & Southern Railway Company, is determined by the length of the run of its cars, on its lines of railway. Such language used in the transfer provision of the franchise of the Seattle, Renton & Southern Railway Company could never properly, by the widest stretch of imagination, be construed to mean that the Seattle, Renton &

Southern Railway Company is entitled to receive a fixed percentage of the fare paid, on transfer passengers.

The decision of the Supreme Court of Washington is an example of the overturning of written contracts by judicial decision, and further, after having set aside a contract, and then by its decision, making a new contract, between the parties, directly contracy to the expressed desires of the parties as to what character of the contract that they had made. We have not taken up the evidence introduced at the trial of the cause, but this court, by a perusal of the same, can have no difficulty in discovering the desire, not only of the trial court, but of the Appellate Court as well, expressed by the Supreme Court of the State of Washington in its opinion cited above, to give the freest kind of transfers to all parts of the city, by the two independent companies, without regard to the contract rights of the Seattle, Renton & Soutehrn Railway Company, by religiously preserving of the rights of the Seattle Electric Company.

Respectfully submitted,

JAMES A. KERR,

Attorney for Plaintiff in Error.

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IN THE

SUPREME COURT

OF THE

United States

OCTOBER TERM, 1913

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF WASHINGTON, EX REL. A. J. LINHOFF,
Defendant in Error.

File No. 22892
Term No. 107

In Error to the Supreme Court of the State of Washington.

Brief of Defendant in Error

MOTION TO DISMISS OR AFFIRM ON THE RECORD.

Comes now the defendant in error, by its attorneys, and moves this Honorable Court to dismiss the writ of error granted herein to the Supreme

Court of the State of Washington, or to affirm the decision of the state court on the record and for the following reasons:

I. No federal question is involved;

II. If a federal question be involved, it has not been properly raised or presented in the lower courts.

ARGUMENT IN SUPPORT OF SAID MOTION.

I. This court has no jurisdiction of the writ of error in this case, and it must be dismissed and the judgment affirmed.

This case is here on a writ of error to the Supreme Court of the State of Washington. Reduced to its ultimate analysis, the sole question below involved the construction of franchise contracts under which plaintiff in error and the Seattle Electric Company operate their respective street railway lines in the City of Seattle, and the real meaning of such contracts under proper rules of interpretation. No State or Federal statute is involved, nor is the State or Federal Constitution directly involved. Plaintiff in error urges, however, that it is being deprived of property without due

process of law.

The instant case does not involve the well-settled rule that this court will sustain jurisdiction where it is shown that a contract is impaired by subsequent legislation. There is no question here presented of the impairment of the contract by subsequent legislation; but the sole question in this court is, "Has the Supreme Court of the State of Washington properly interpreted the franchise contracts in question?"

In repeated rulings, this court has refused to take jurisdiction under such a record on the ground that no Federal question is involved. The appellate jurisdiction of this court cannot be invoked merely because the State court has erroneously construed a contract; the impairment of a contract cannot be said to result by judicial construction thereof, but only by some subsequent legislation which impairs such contract.

In *Knox vs. Exchange Bank of Virginia*, 29 L. Ed., at page 115, this court well says:

> "But we are not authorized by the judiciary act to review the judgments of the state courts, because their judgments refuse to give effect to valid contracts, or because those judgments, in their effect, impair the obligation of contracts.

If we did, every case decided in a state court could be brought here, when the party setting up a contract alleged that the court had taken a different view of its obligation to that which he held."

In *Lehigh Water Co. vs. Easton, et al.*, 30 L. Ed., at page 1060, the court says:

"The argument in behalf of the company seems to rest upon the general idea that this court, under the statutes defining its appellate jurisdiction, may re-examine the judgment of the state court in every case involving the enforcement of contracts. But this view is unsound. The state court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it may hold a contract void which in our opinion is void; or its interpretation of the contract may in our opinion be radically wrong; but in neither of such cases would the judgment be reviewable by this court under the clause of the Constitution protecting the obligation of contracts against impairment by state legislation. * * *"

In *Yazoo R. R. Co. vs. Adams*, 45 L. Ed., at page 417, this court well says:

"The case then resolves itself into this: Whether jurisdiction can be sustained when the only question involved is the construction of a charter or contract, although it appear that there were statutes subsequent thereto which might have been, but were not, relied upon as raising a Federal question concerning the con-

struction of the contract. There is no doubt of the general proposition that, where a contract is alleged to have been impaired by subsequent legislation, this court will put its own construction upon the contract, though it may differ from that of the Supreme Court of the state. The authorities upon this point are very numerous, but they all belong to a class of cases in which it was averred that, properly construed, the contract was impaired by subsequent legislation; but, if the sole question be whether the Supreme Court has properly interpreted the contract, and there be no question of subsequent legislative impairment, there is no Federal question to be answered."

See also:

Central Land Co. vs. Laidley, 40 L. Ed. 91.

R. R. Co. vs. Rock, 18 L. Ed. 381.

R. R. Co. vs. McClure, 19 L. Ed. 997.

Delmas vs. Merchant's Ins. Co., 29 L. Ed. 755.

University vs. People, 25 L. Ed. 387.

Chicago Life Ins. Co. vs. Needles, 28 L. Ed. 1084.

It should be borne in mind at this point that no state statute adopted subsequent to the making of the franchise contracts in question is assailed in this court, nor challenged in the lower courts, nor is

it urged here, nor was it contended in the lower courts, that the franchise contracts in question are invalid; in fact, the validity of the contracts in question is not only pleaded, but is otherwise admitted by the plaintiff in error. Its own answer herein, among other things, pleads:

> "* * * that said Seattle, Renton & Southern Railway Company is obligated by the terms and conditions of its said contract with the City of Seattle to give and receive transfers on the basis as outlined in said transfer provision and Ordinance No. 15919 * * *."

(Transcript, p. 21.)

In Conclusion of Law No. 4, proposed by plaintiff in error in the lower court, it admits the validity of these contracts in the following language:

> "* * * and the provisions thereof are a valid subsisting agreement and contract between The City of Seattle and the respective companies operating thereunder."

(Transcript, p. 25.)

The validity of the contracts in question is also otherwise admitted by the plaintiff in error in the proceedings in the lower court. (See Transcript, pp. 71 and 74.)

DUE PROCESS OF LAW.

The State Supreme Court decided no Federal question, nor was any Federal question necessary to its decision; but it disposed of the case entirely on non-Federal grounds sufficient to support its judgment. The franchise contracts in question were before the court for construction and all the court did in its decision was to ascertain the real intent and meaning of these contracts under well known rules of construction.

State of Washington ex rel. Linhoff vs. Seattle, Renton & Southern Ry. Co., 62 Wash. 544.

(Transcript, pp. 92 to 96, inclusive.)

There is no color for a contention that a man is deprived of property without due process of law by enforcing against him a decree for alimony rendered in another state in a proceeding in which he appeared and was heard.

Lynde vs. Lynde, 181 U. S. 183; 45 L. Ed. 810; 21 Sup. Ct. Rep. 555.

A party who seeks and is given the opportunity to litigate the rights claimed by it cannot have

the judgment reversed in the Supreme Court of the United States on the ground that due process of law was denied because the litigation did not result successfully.

> *Remington Paper Co. vs. Watson*, 173 U. S. 443; 43 L. Ed. 762; 19 Sup. Ct. Rep. 456.

The judgment or decree of a state court cannot be re-examined in the Supreme Court of the United States simply because a Federal question was presented to the state court for determination. That court must also decide it.

> *Crowell vs. Randall*, 10 Pet. 368; 9 L. Ed. 458.
> *Israel vs. Arthur*, 152 U. S. 355; 38 L. Ed. 474; 14 Sup. Ct. Rep. 583.

If the decision of a Federal question is rendered unnecessary by the view which that court properly takes of the rest of the case within the scope of the pleadings, the judgment is not open to review in the Supreme Court of the United States.

> *Chapman vs. Goodnow*, 123 U. S. 540; 31 L. Ed. 235.
>
> *Wells vs. Goodnow*, 150 U. S. 84; 37 L. Ed. 1007.

Where the state court disposes of the case upon non-Federal grounds sufficient to support its judgment, it is obvious that the Supreme Court of the United States cannot review such judgment on the theory that a decision of the Federal question was necessarily involved.

McManus vs. O'Sullivan, 91 U. S. 578; 23 L. Ed. 390.

Note, 63 L. R. A., p. 42, and cases there cited.

It is necessary that the decision of the state court upon a Federal question be controlling in the disposition of the case.

Citizens Bank vs. Board of Liquidation, 98 U. S. 140; 25 L. Ed. 114.

The only questions which will be considered are those which are involved in the record, and received the consideration of the state court.

First Natl. Bank vs. Kentucky, 9 Wall. 353; 19 L. Ed. 707.

Hamilton Mfg. Co. vs. Mass., 6 Wall. 632; 18 Ld. Ed. 904.

Marsh vs. Nichols, S. & Co., 140 U. S. 344; 35 L. Ed. 413; 11 Sup. Ct. Rep. 798.

The plaintiff in error has had its day in court; it admitted the validity of the contracts in question and the obligations imposed upon it by reason thereof, and presented to the courts of the state the construction and meaning which it believed should attach to these contracts, but the state court did not accept the construction sought by the plaintiff in error and reached a different conclusion as to the real meaning of these contracts. (Transcript, pp. 92 to 97.)

Even though the state court reached a wrong conclusion or placed an erroneous construction upon such contracts, yet the plaintiff in error having had its day in court, it cannot be said that such decision would deprive it of its property without due process of law.

In Central Land Co. vs. Laidley, 40 L. Ed., at page 95, this court states the rule very clearly in the following language:

> "When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the United States."

Fisher vs. St. Louis, 48 L. Ed. 1023.

Bergemann vs. Backer, 39 L. Ed. 845.

Morley vs. R. R. Co. 36 L. Ed. 925.

Head vs. Co., 28 L. Ed. 889.

Walker vs. Sauvinet, 23 L. Ed. 678.

Plaintiff in error maintains, however, that a Federal question is involved in this appeal because of the refusal of the lower court to grant a motion to dismiss and a motion to remand to the lower court, such motions having been made and presented prior to the final decision of the Supreme Court. Their contention is that after the decision of the lower court and while the appeal was pending Sections 2 and 4 of Ordinance No. 15919, the franchise ordinance passed upon by the lower court, were amended by Ordinance No. 25038, passed by the City Council of the City of Seattle, and that consequently the Supreme Court of the state did not go into the real merits of the question; that issuance of a writ of mandate directing the exchange of transfers upon the 50 per cent. basis without taking into consideration the amendatory ordinance constitutes the taking of property without due process

of law. The lower court held, however, that the only changes made by the amendatory ordinance were irrelevant to the issue presented in the main case and dismissed the motions as technical and without merit.

State ex rel. Linhoff vs. Seattle, etc., R. Co., 62 Wash. 124.

Moreover, the record upon which this decision was based is not now before this court. Neither the motion to dismiss nor the motion to remand is included in the transcript.

In its third assignment of error (Transcript, p. 99) reference is made to an affidavit in support of the motion made by the plaintiff in error, the affidavit is quoted from at considerable length, but the affidavit itself is not made a part of the record nor included in the transcript. Nor does this record show whether or not counter-affidavits were filed or the facts set forth in the affidavit controverted. Neither is amendatory Ordinance No. 25038 inserted in the transcript. This court certainly will not review the decision of the lower court where the record passed upon by the lower court is not before it.

II.—If a Federal question be involved, it was

not seasonably and sufficiently raised and presented in the lower courts.

The facts necessary to give this court jurisdiction were well stated in *Forney vs. Toole*, 17 L. Ed., at page 217, in the following language:

> "* * * it has repeatedly been declared by this court, as will appear by the reports of its decisions, that in order to give it jurisdiction, it must appear that the point was raised and decided in the state court; that the attention of the court was called to the particular clause of the Constitution of the United States upon which the party relied, and to the right he claimed under it; and that, with the question thus distinctly presented, the decision was against him."

See also:

R. R. Co. vs. Adams, 45 L. Ed. 415.

Eustis vs. Bolles, 37 L. Ed. 1111.

Oxley Co. vs. County, 41 L. Ed. 1149.

The constitutional question presented to this court was not specifically raised, presented to and decided by either the trial court or the State Supreme Court. In its answer, plaintiff in error does, in a very general way, plead a violation of the United States Constitution, but fails to claim spe-

cifically what part of the Constitution is violated, and in its application for a writ of error, it also refers to the matter. (Transcript, pp. 14, and 98 to 102.) It is a very important fact that plaintiff in error does not anywhere in its proposed findings refer to any Constitutional violation or question. (Transcript, pp. 16 to 26.)

The attention of the state court must be directed to the particular section of the Federal Constitution, or to the Federal statute, on which reliance is placed and to the right claimed under it.

Maxwell vs. Newbold, 18 How. 511; 15 L. Ed. 506.

Chapin vs. Frye, 179 U. S. 127; 45 L. Ed. 119; 21 Sup. Ct. Rep. 71.

Hoyt vs. Sheldon, 1 Black 518; 17 L. Ed. 65.

Forney vs. Towle, 1 Black 350; 17 L. Ed. 216.

Capital City Dairy Co. vs. Ohio, 183 U. S. 238; 46 L. Ed. 171.

Clark vs. McDade, 165 U. S. 168; 41 L. Ed. 673.

Under the U. S. Rev. Stat., Sec. 709, among

other things, it is provided that the protection of the Constitution here sought must be "specially set up or claimed." The foregoing provisions have been many times construed by this court, wherein it has been held that he who claims the protection of the United States Constitution must specially set up and claim the same "at the proper time and in the proper way," and that "the right on which the party relies must be called to the attention of the court, in some proper way, and the decision must be against the right claimed."

Oxley vs. County, 41 L. Ed. 1149.

In *R. R. Co. vs. Chicago*, 41 L. Ed. 511, it is said:

> "But the record does not show that the company specially set up or claimed in the state courts or either of them any right under the Constitution of the United States. It does not appear that the attention even of the trial court was called to the fact hat he company, in any form or for any purpose, invoked he protection of that instrument. Nor does it appear from the record that any Federal right was specially set up or claimed in the supreme court of the state."

In the *Oxley* case, *supra*, 41 L. Ed. 1151, this court says:

> "Looking into the record we do not find that any reference was made in the court of original jurisdiction to the Constitution of the United States. Nor can it be inferred from the opinion of the supreme court of Missouri that that court was informed by the contention of the parties that any Federal right, privilege or immunity was intended to be asserted. For aught that appears the state court proceeded in its determination of the cause without any thought that it was expected to decide a Federal question."

The record now before this court is absolutely barren of any reference to, or any protection claimed under the Fourteenth or any other amendment of the Constitution of the United States, by the plaintiff in error, either in the trial court or the state Supreme Court. The protection of that instrument, or any amendment to it, was not "specially set up or claimed" by the plaintiff in error in either of those courts, as clearly required by Section 709 of the United States Rev. Stat., and the decision of the Supreme Court of the State of Washington affords conclusive evidence to the same effect, and further that such court did not, and did not intend to, pass upon any Federal question whatsoever. (Transcript, pp. 92 to 97.)

It is well settled that a real and not a fictitious

Federal question is essential to the exercise of jurisdiction by this court.

Hamblin vs. Western Land Co., 37 L. Ed. 267.

As the due process clause of the Constitution was not designed to interfere with the power of the states to regulate the forms and modes of procedure, so neither was it designed to interfere with the state courts in administering the process provided by the law of the state. A state cannot, therefore, be deemed guilty of a violation of this clause because one of its courts makes a wrong decision.

Vol. 5, pp. 621-2, *Ency. of U. S. Sup. Ct. Rep.*

We respectfully submit that the foregoing motion to dismiss the writ of error or to affirm on the record should be granted.

Not waiving this motion, however, and in the event that this court shall sustain jurisdiction, we respectfully submit the following brief on the merits.

STATEMENT.

This action was instituted in the Superior Court, in and for King County, against the Seattle Electric Company and the Seattle, Renton & South-

ern Railway Company for the purpose of compelling an interchange of transfers on a 5 cent fare. After the introduction of testimony and argument by respective counsel, the lower court signed the writ of mandate directed against each of said companies, requiring the interchange of transfers, as prayed for. The Seattle Electric Company made offer at the time of trial to exchange on a fifty per cent. basis of redemption on each cash fare and has acquiesced in this decree. The other respondent, Seattle, Renton & Southern Railway Company, prosecuted its appeal from such order.

The question involved is reduced solely to the construction of the franchise. Section 7 thereof provides that it shall be the duty of the Seattle, Renton & Southern Railway Company to exchange transfers with any other company that shall offer to exchange with it. It then goes on to set forth the basis of settlement between the two companies. The appellant contends that its franchise does not require an unconditional exchange, but that the duty of issuing transfers is limited by a subsequent proviso designating the terms and conditions upon which such transfers shall be issued. We answer, that even if this be true, it is entitled, under the

terms of its franchise, to no more than fifty per cent, and must, therefore, accept the offer of the Seattle Electric Company and make exchange as directed in the writ.

The court so construed the ordinance. It ordered the Seattle, Renton & Southern Railway Company to accept the offer made by the Seattle Electric Company in open court, and to exchange transfers on a basis of two and one-half ($2\frac{1}{2}$) cents redemption on each transfer issued and received by it on a cash fare. Appellant contends that it is aggrieved by this ruling, in that it is entitled to more than fifty per cent of each fare as its basis of redemption.

This is the only question in the case. If it is not entitled to more than two and one-half ($2\frac{1}{2}$) cents redemption on each transfer issued on a cash fare, then it has no cause of complaint against the writ.

In the solution of this question we shall confine our argument solely to the construction of the terms of the clause in issue.

We are seeking to arrive at the true intent and purport of this provision; we, therefore, invoke the

fundamental rules of construction which the courts apply for the attainment of truth.

First, we must look into the history of this franchise and the conditions under which it was passed. The Seattle, Renton & Southern has been operating its line for over fifteen years past. It originally operated under the provisions of that certain franchise granted to S. L. Bowman, being Ordinance No. 1111 (Transcript, pp. 4 and 32). About five years after the granting of this franchise a franchise was granted to The Seattle Electric Company, commonly called the "Blanket franchise" and covering the major part of the net work system now owned and controlled by said company (Transcript, p. 31). This franchise recognizes the existence of the S. L. Bowman line and made it the duty of The Seattle Electric Company to exchange transfers with said second company.

> "TRANSFERS: Any passenger who has paid fare, shall, on request, be furnished with a transfer to that certain system of street railways authorized by Ordinance No. 5277, entitled 'An Ordinance authorizing Winthrop Smith, Albert Stone and Andrew F. Burleigh, their successors or assigns, to construct, operate and maintain a street railroad in the City of Seattle,' approved March 15th, 1899, or to that

certain line of street railway (when constructed and in operation) authorized to be constructed within the limits of the City of Seattle by Ordinance No. 5444, entitled 'An Ordinance authorizing the Seattle-Tacoma Railway Company, its successors or assigns, to construct, operate and maintain a street railway in the City of Seattle,' approved July 11th, 1889, or to that certain line of street railways authorized by Ordinance No. 1879, entitled 'An Ordinance granting to Fred E. Sander, his successors and assigns, a franchise to build and operate a street railway in the City of Seattle,' approved October 31st, 1891, as amended by Ordinance No. 2607, approved February 28th, 1893; or to that certain line of street railway authorized by Ordinance No. 1441 entitled 'An Ordinance granting to S. L. Bowman and his assigns, a franchise to build and operate a street railway in the City of Seattle,' approved July 19th, 1890, as amended by Ordinance No. 1488, approved September 2, 1890; provided that this provision respecting transfers to said other lines shall be in force only as to such of said other lines as shall give and receive transfers to and from the lines of said grantees, their successors and assigns, on the basis of a cash redemption by each line of transfers issued by it and used on the other line at the rate of two and one-half cents for ordinary transfers, and one and one-fourth cents for school children transfers, and passengers *from any of said other lines which may give and receive transfers on the basis* aforesaid to and from the lines of said grantees, their successors and assigns, presenting a transfer from such other lines on which they have paid a fare not less than the fare charged on this line, shall be

entitled to passage on the cars of this line to any point within the city limits or to any point on either of the extensions mentioned in Section 13 hereof (when constructed or acquired); any such transfer, however, shall be issued and be issued and be good only at or for such an hour and time and at such a place as shall render the entire trip of the passenger practically continuous, and no passenger whose ride on any of such other lines begins outside of the city limits shall be entitled to a transfer over this line, and transfers issued by this line shall not be good on any such other lines beyond the city limits; provided, further, that said grantees, their successors and assigns, shall not be liable in any event to any passenger or other person beyond their own lines, and said grantees, their successors and assigns, may make reasonable rules and regulations not in conflict herewith, respecting the giving and receiving of transfers for the prevention of fraud."

Some years later the Seattle, Renton & Southern was reorganized, its lines were extended, the old franchise was surrendered and a new franchise granted said company with many additional and valuable rights. This ordinance was passed in the light of the existing franchise of The Seattle Electric Company. The Seattle Electric Company was the only other company owning and operating street car lines in the City of Seattle. Ordinance No. 15919, being the franchise of appellant in question, referred to the franchise of the Seattle Electric

Company and made it a part thereof.

> "TRANSFERS: The payment of a cash fare or the presentation of a ticket shall entitle the passenger to a transfer to any line of street railway company now operating within the city limits, or that may hereafter operate therein, which shall give and receive transfers to and from all the lines owned, operated or controlled by such company, to and from the lines of grantee, his successors and assigns, on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which the transfer is issued and on which the transfer is received; but no such transfer shall be good except upon the first connecting car at the point of transfer and upon a car going in the same general direction; and said grantee, his successors and assigns, may make reasonable rules and regulations not in conflict herewith, respecting the giving and receiving of transfers for the prevention of fraud."

It required the exchange of transfers with "any other line now operating." As above stated, The Seattle Electric Company was the only other street railway company in existence in the city. The franchise of the Seattle, Renton & Southern thus made it the duty of said company to exchange transfers with The Seattle Electric Company; the franchise of The Seattle Electric Company made it the duty of that company to exchange transfers with the

Seattle, Renton & Southern. The original franchise of The Seattle Electric Company stated the basis of exchange to be fifty per cent., and required The Seattle Electric Company to exchange only with such companies as would issue and receive transfers on said fifty per cent. basis. The subsequent franchise of the Seattle, Renton & Southern made it the duty of that company to exchange with The Seattle Electric Company. It was evident at the time said second franchise was granted that an exchange could only be made upon the basis of fifty per cent.; the provision respecting transfers was obviously inserted for the purpose of providing the people with such a system of transfers. The nub of the whole matter, therefore, centers down to this proposition: that the City Council, with knowledge of the existing franchise ordinance and duty imposed on The Seattle Electric Company of exchanging transfers with all other companies on a fifty per cent. basis, passed this subsequent ordinance requiring the Seattle, Renton & Southern to exchange with The Seattle Electric Company. The purpose was to obtain the exchange of transfers. This could only be done on a fifty per cent. basis. It is, therefore, manifest tha the true object to be obtained in the granting

of this franchise was the imposition of the duty of exchanging transfers upon the Seattle, Renton & Southern on the basis set forth in the prior ordinance, in the light of which this subsequent ordinance was passed.

Plaintiff in error, at page 8 of its brief, refers to certain negotiations between The City of Seattle and the Seattle, Renton & Southern Railway Company relative to the interchange of transferes with The Seattle Electric Company and to a refusal on its part to accede to such demands. There is absolutely nothing in the record to sustain this statement. In Assignment of Error No. 3, page 99 of the Transcript, plaintiff in error sets forth an affidavit in support of the motion to remand the case from the Supreme Court of the state to the lower court. The affidavit itself, however, is not made a part of this record. There is nothing to indicate by whom it was signed or whether the facts set forth therein were controverted by counter-affidavits. Plaintiff in error further states on the same page of its brief:

> "That thereafter, on October 3, 1910, The City of Seattle duly passed and adopted Ordinance No. 25038, entitled 'An ordinance amending Sections 2 and 4 of Ordinance No. 15919,' and ever since the 3d day of October, 1910, the

> Seattle, Renton & Southern Railway Company has continued its operation, and is now operating its railway thereunder by virtue of the terms and conditions of said contract evidenced by Ordinance No. 25038."

It is significant, however, that said Ordinance No. 25038 is not incorporated in this record nor is it before this court, and there is no way for this court to determine in what particular, if any, it differs from Ordinance No. 15919. This court certainly will not go outside the record and search for facts to sustain the position of plaintiff in error, and should consider only such facts as the record clearly shows were considered by the lower court.

ARGUMENT.

I.

Whether the plaintiff in error is entitled to more than fifty per cent. of the cash transfer fare is to be determined by the provisions of its franchise as read by this court in the light of the proper principles of construction. We shall first present those rules of construction which may assist in arriving at a correct solution of this question and under Subdivision II shall discuss the various theories that have been advanced.

(a) The Rule of Strict Construction Against the Grantee.

It will be observed the appellant contends that the provision requiring the exchange of transfers imposes no duty upon it for the reason that it requires such exchange only on a certain basis of settlement. This basis, it is alleged, is inconsistent with that set forth in the franchise of The Seattle Electric Company; therefore, they conclude, no exchange can be compelled.

The result of the construction which they seek to have placed upon this franchise naturally results in rendering the provisions of this franchise and of the franchise of The Seattle Electric Company, each of which refer to and relate to the other and each of which require the exchange of transfers, an absolute nullity. The courts will be slow to place a construction upon the subsequent clause relating to the terms of settlement between these two companies which will defeat the prime object of the franchise. This would be true even as to a contract between private parties; with far greater force does it apply here. The court is now construing a franchise whereunder the people surrendered valuable public

rights. It is a fundamental rule that in the interpretation of such documents the rule of strict construction as against the grantee is applied with greatest force; the grantee takes naught but that which is expressly given, words cannot be read into the franchise in its favor; its rights may not be enlarged, nor may the duties imposed be restricted by the process of implication or the reading of language into the sentences of the franchise. Therefore, in construing the nature and extent of the duty which this clause imposes upon the grantee, we are entitled to the benefit of that principle which holds that the franchise must be construed most strongly in favor of the public. There should be no such a thing as a doubt as to the meaning of these words, for if there be a doubt, under the rule invoked, it must be determined in favor of the public.

> "In the construction of a charter, to be in doubt, is to be resolved; and every resolution which springs from doubt is against the corporation."
>
> *Pennsylvania Ry. Co. vs. Canal Commrs.*, 21 Pa. 9.

Therefore, in this instance, if there be a doubt as to the meaning of the clause which provides for

the basis of settlement, if the court should feel that it may be construed in various ways, some of which would defeat the public right to transfers and another which would enable the public to obtain this right, then this case is determined, for the moment that the court finds that there is such a doubt and the words are susceptible to an interpretation which will grant instead of defeat the right which was sought to be obtained, then it becomes the duty of the court to adopt this latter construction and to enforce the true meaning of the document.

(b). The Proviso Must Yield to the Main Grant, If It Defeats the Same.

Under the authorities below cited we may go even further, and even though the court should find that the basis of settlement provided for in the Seattle, Renton & Southern Railway Company's franchise was clearly inconsistent with that set forth in The Seattle Electric Company's franchise, the right of the public to the benefit of these transfers would not be defeated. The franchise of the Seattle, Renton & Southern Railway Company was passed in the light of the prior existing franchise of The Seattle Electric Company, which set the basis of exchange

at fifty per cent. The latter franchise made it the duty of the Seattle, Renton & Southern Railway Company, in unqualified terms, to exchange transfers with the Seattle Electric Company. Let us assume that the clause imposing this duty was followed by a subsequent clause which entitled the Seattle, Renton & Southern Railway to seventy-five per cent. of the fare, which of these two provisions is to be given force. The two cannot stand together Either that clause which provides for the exchange of transfers must be declared a nullity, or the clause which determines the basis of settlement must fall. Again we apply a legal principle which can scarcely be disputed. In the construction of franchises the goal of the court is to seek the true meaning and intent of the franchise and to give that intent full force. Whether a right is granted or a duty imposed which constitutes the real essence of the franchise, the courts will endeavor to give those provisions full life. If the franchise contain subsequent clauses, limitations or provisos which would defeat and annul the essence of the franchise, either as regards the public (the grantor) or the grantee, then the proviso or limitation must fall. So here, if the proviso relating to the basis of settlement be

tween the two companies defeats the primary duty of issuing transfers, then the proviso must be read out of existence. The company cannot stand under the protection of such proviso for the purpose of evading the duty which was imposed upon it by the franchise; it cannot reap the benefits and yet, under the color of this proviso, evade the payment of the obligation which formed the consideration for the granting away of these valuable public rights.

West Branch Boom Co. vs. Penn. Joint Lumber Co., 15 Atl. 569.

Mills vs. St. Clair Co., 8 How. (49 U. S.) 569.

Whitaker vs. Delaware Canal Co., 87 Pa. St. 31.

(c) The Basis of Settlement Does Not Limit the Duty of Exchanging Transfers.

In the foregoing section we assumed that the settlement clause was a limitation on the transfer right.

In fact, the sentence is co-ordinate. The first portion provides for transfers. It states that the Fenton line shall issue transfers to any company that shall exchange with it. This duty is absolute.

It is followed by no "providing" clause as in the case of the Bowman franchise, nor is there any express limitation. The words "on the basis of settlement" do not limit the duty of exchanging transfers. The council, after having established the duty of exchanging transfers, then proceeds to set forth the basis of redemption as between the two companies. And we invoke the rule of strict construction as against the grantee. If it had been the intention of the city to require the giving of transfers only to a company which would exchange on certain terms, that intent should have been expressed in a definite clause of limitation, as in the Bowman franchise. The sentence imposing the duty should have been followed by a proviso, "provided that the above duty shall be in force only as to such companies as will exchange on the following basis of redemption." This was not done. The sentence makes the duty absolute of exchanging with any company that will exchange with it, and then goes on to set forth what the basis of settlement shall be. This is a matter of concern only to the two companies. Their disagreement does not affect the right of the public to transfers. Even if there is a variance between the rates of the two franchises, that would simply present a

question between them as to which is controlling. There being no proviso it would not limit the grantors' right to transfers.

(d). The Ordinance Must Be Construed in the Light of the Prior Franchise.

It is a fundamental rule of construction that in the absence of express repeal, all legislation must be so construed, if it be possible, as to harmonize with prior laws, so that all may stand together.

Said Ordinance No. 15919 was passed in the light of the Bowman franchise and the basis of settlement explicitly set forth therein. We contend that the Crawford franchise, when correctly construed, sets forth a basis of redemption identical with that of The Seattle Electric Company, and we invoke the above principle in support of this contention.

> "Where similar franchises are granted to two corporations, the charters must, if possible, receive such a construction that effect may be given to both, and neither be held to be in derogation of the other."
>
> Elliott on Railroads, Vol. I, § 38.
>
> *Pennsylvania R. Co.'s Appeal*, 93 Pa. St. 150.

Hudson River Tel. Co. vs. Waterville Co., 9 N. Y. S. 177.

II.

In the light of the rules of construction above laid down and in the light of the history of this matter and of the purpose for which this provision was admittedly inserted in the franchise, let us now turn to the provisions of this clause and seek to discover the basis of settlement therein provided for.

The language is as follows: "On the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which the transfer is received bears to the sum of the run of the local route of the cars from which the transfer is issued and on which the transfer is received."

Various theories have been advanced by the respective parties as to the meaning of this language. *Whatever theory be sustained, whatever be the method of construction that shall be adopted, the Seattle, Renton & Southern will be found in no event to be entitled to more than fifty per cent.* We shall take up each theory in order and apply them

to the undisputed evidence that the above assertion may be verified.

(a). The Route Is the Unit.

If the words are read just as they stand in the ordinance, without the insertion of additional words by means of implication, as is asked by appellant, then there is no room for dispute. They state that the basis of redemption shall be in such proportion as the run or local route of the car receiving the transfer bears to the sum of the runs of the local route of the cars issuing and receiving transfers.

No specific percentage is set forth—a basis is established by which that percentage can be determined. That basis is a unit common to both companies. Every basis of settlement which does not set forth in advance the exact percentage or amount to which the various parties may be entitled, must necessarily set out the method by which that amount is to be figured out. It must designate a unit common to both parties and which both parties must use in computing their respective amounts. In this instance the unit is the "run or local route." The basis of settlement is to be in such proportion as the unit of each company bears to the sum of the

units; i. e., the percentage of the company issuing the transfer shall be in the same ratio as its local route (the common unit) bears to the sum of the local routes of the cars issuing and receiving transfers (the sum of the units).

Under the principle above evoked, no words should be read into this provision. As it now stands the proportion is such part of the fare as the route of the car issuing the transfer bears to the sum of the routes over which the passenger travels for his five cent fare. This is nothing said about the length of mileage of the route, as is contended by counsel. It makes no difference whether the route of the car issuing, or the car receiving, is one mile or ten miles long. The line issuing the transfer is entitled to that proportion of the fare which its route bears to the sum of the routes over which the passenger travels by virtue of his payment of five cents. At the time the franchise was granted and at the present time there were and are but two routes in the city, that of the Seattle, Renton & Southern Railway Company and that of The Seattle Electric Company.

Where you have a single street railway line in a city the definition of its route is simple. It consists of the line of track between its two opposing

termini. This is the case of the Seattle, Renton & Southern.

But when you have a net work system like The Seattle Electric Company, the question becomes more difficult. Obviously you cannot ride over the entire system for a single fare. You cannot abuse the transfer privilege by what is known as "looping." On the other hand, you can ride from any one terminus to any other by the most direct line between said points. This constitutes one route of the company. Every line of track between two opposed termini is a route. In other words, each system is a route between any two termini over which a passenger can travel for a single fare. It is true a passenger can travel to many different points in this net work system, but each time he travels to a different point he must pay an additional fare. The system is held open as offering a choice of routes, each for a five cent fare, but in no event can a passenger travel over more than one route for said fare; thus a passenger entering one of the Seattle, Renton & Southern's cars at its franchise limit can travel to any other point on its line for five cents and on disembarking at any intersection with The Seattle Electric Company can travel from any of

said intersecting points to any other point in the same general direction on The Seattle Electric Company's line for an additional fare of five cents. He has on The Seattle Electric Company's system his choice of routes for a single fare, but for such fare he can choose but one route and the same is true of the Renton line; thus reverting to the words of the franchise, a passenger on the line of the Seattle, Renton & Southern, upon which he has paid a five cent fare, has traveled, and can have traveled only over one route on said line; and when he enters the line of The Seattle Electric Company he can travel only over one route, though he may have the choice of many. As above stated, there are but the two systems in the city, therefore, a passenger traveling on the line of the Seattle, Renton & Southern Railway Company and on The Seattle Electric Company can onl ytravel on two routes, viz.: on one on The Seattle Electric Company and on one on the Seattle, Renton & Southern. By traveling on these two lines he can now, without the interchange of transfers, ride between any points reached by street car facilities within the City of Seattle for the sum of ten cents, viz.: five cents to each company. When transfers are issued between the two companies he

can travel from any point on the Seattle, Renton & Southern to any point on the lines of The Seattle Electric Company within the city limits for the sum of five cents and in traveling between any of the points on the lines of these two companies, which means between any points within the city limits served by street car facilities, he can travel but upon a total of two routes, i. e., one route on the Seattle, Renton & Southern and one on The Seattle Electric Company. Now then, if the company issuing the transfer is to receive such proportion of the fare as its route bears to the sum of the routes of the lines issuing and receiving transfers, it follows that that proportion must be as one to two since a passenger can travel only over two routes, viz.: over the route of the line issuing the transfer and over one route of the line receiving it; thus the proportion is fifty per cent., just the same as is provided for in The Seattle Electric Company's franchise and just the basis under which The Seattle Electric Company has offered to exchange.

The reason for inserting this provision in this complicated language, instead of stating outright a fifty per cent. basis is obvious. The council was granting a franchise that lasted for many years; it

was looking forward to the growth and changes that might be expected in this city during the next thirty years, or more. At the time the franchise was granted there were but the two systems operating in the city. As far as those two were concerned the designation of a fifty per cent. basis would have been satisfactory. The advent of a third or fourth street railway line was contemplated. At the very time this franchise was granted there was an application for a franchise for an underground system, and also the Merle J. Wightman application in evidence, which contains a similar clause. The city had, and still has, every reason to believe that before the expiration of the Seattle, Renton & Southern franchise there will be three, or four, or more companies operating street car lines in the city limits. Therefore, in looking to the future, the City Council set forth as the basis of settlement an automatic scheme of adjustment which would operate, no matter how many lines might come into the city.

For example, if there were three companies in the city, under the scheme set forth in the Seattle, Renton & Southern franchise, the proportion of distribution would be one-third for each, if the passenger should happen to travel over each of the

three lines in going between the two points over which he desired to travel; thus if he paid a five cent fare on the Seattle, Renton & Southern line and transferred from them to the Merle Wightman line and thence to the line of a third company, the proportion would be as the route of the car issuing transfers is to the total sum of the routes over which the passenger traveled, viz.: as one to three. In such case each company would receive one-third of the fare. If the passenger traveled over but two of the routes, each company would receive one-half of the fare. This automatic basis of settlement was inserted with due care and forethought; it was meant to fit in with existing conditions in the city so as to provide for an interchange on a fifty per cent. basis, and was further meant to provide for the time when there should be additional companies in the city and to put an end to all complications, growing out of renewals or new grants, so that eventually there might be a uniform basis of settlement provided for, which would always operate satisfactorily during the life of any of the franchises, irrespective of how many lines might come into existence in the city during the life of said franchise.

It is obvious that where franchises are granted

for a period of thirty years and more it is impossible to set down a specific percentage as the basis of settlement, for the simple reason that it would be impossible to tell how many other companies might build in the city during the period. The scheme adopted was meant to guard against this very complication. Instead of stating a specific percentage, it states a certain basis of settlement; this basis remains the same no matter how many companies are operating, but the percentage each shall receive depends upon the number of companies which shall operate and over which the passenger travels. The basis of settlement thus automatically adjusts itself to the number of companies in existence and each company receives that proportion of the fare which its route bears to the sum of routes over which the passenger travels by means of this system of interchange of transfers. Since new franchises are constantly being created and old ones expiring, this was the only way of preventing complications between the various franchises, arising out of changed conditions and at the same time retaining to the people the right of a five cent fare. The intent of all of our franchises has been to give the people the right to travel between any two points within the city limits

for five cents. It is immaterial whether these franchises are all granted to one company or to various different companies so far as the people's rights are concerned. We, therefore, submit that if the words are taken as they stand, the proportion which the Seattle, Renton & Southern can receive for each transfer issued from its line is as one to two, since there are but two routes in the city; hence, on the admitted facts in the record, the Seattle, Renton & Southern Railway Company is entitled to but fifty per cent. on each transfer issued or received, and the writ should issue against it compelling said company to exchange on such basis.

(b). That the Number of Car Routes Is the Test.

Again observe the language. The test is claimed to be the route of the car issuing the transfer as compared to the sum of the runs of all cars issuing and receiving transfers.

The Seattle, Renton & Southern has only one straight line and, therefore, has no transfer system. You can ride from one terminus to another on a single car. The Electric Company, on the other hand, owns a large network system and operates

thirty different car lines over the same. Transfers are issued from one line to another. A passenger, under its franchise, may travel in one general direction between any points on its system for five cents, even though several transfers be necessary.

A man entering its line at points on the north or south city limits would often have to transfer to a second car of the Electric Company before reaching the Seattle, Renton & Southern line. Bearing a transfer from The Seattle Electric Company he would ride on the latter line. What percentage would appellant then have—obviously such proportion as the run of the car receiving the transfer bears to the sum of the runs of the cars issuing and receiving such transfers. Here he would have ridden on three cars and the percentage would be as one to three. In no event could he ride on less than one car route of The Seattle Electric Company and in no event on more than one car of the appellant, as it has no network system or transfers. On this basis it could never receive more than one-half, and often only one-third or one-fourth.

We do not urge this view upon the court, because we believe that the actual run of the particular car issuing or receiving the transfer is imma-

terial that is a matter left entirely to the volition of the companies. They may route their cars so as to best handle the traffic. The city has reserved no control over this matter. It is provided only in the franchises that adequate service be maintained and that the fare between and two points on the system of each company be only five cents, whether he be carried on a single car or transfered from one to another.

The route of a street railway company does not depend upon the method it adopts in running its cars. The Madison Street line is a single route, even though you have to transfer at the power house. A route is a unit, over which a continuous service must be maintained between the two termini, for the stated fare of five cents.

In the case of The Seattle Electric Company, all the nucleus of its system was granted under the "blanket franchise." All of the lines that intersect with the Seattle, Renton & Southern come under this ordinance. As the city grew these lines were extended outwards under new franchises. But in each case they remained the same route, only enlarged, and by appropriate provisions, or by routing

the same cars out to the new terminals, the right of the passenger to a five-cent ride was maintained.

If it were otherwise, the Renton line could divide its run into three or four, or more parts, run one car in each and by issuing transfers make a total of three or four routes for each interchange.

(c) That It Is the Sum of the Routes.

The Seattle Electric Company operates over thirty car lines. The Renton has but the one line over which it routes its cars, some the entire distance to Orchard Beach, others to points intermediate.

The service thus afforded by the former company is six or seven times as great as that of the Renton line. It must carry passengers to and from the Renton line to points all over the city, while the latter company serves only one district. There is, therefore, much justice in the contention that the proportion should be as the car routes of each company bears to the sum of the car lines issuing or receiving transfers. This would be about one to six for the Seattle, Renton & Southern, and would be in proportion to the actual service which each of them afford.

(d) That Mileage Is the Basis.

Let us now examine appellant's theory of this franchise. First, it desires the court to read into this franchise the words "mileage or length" so that the proportion should be as the length of the route of the car issuing the transfer is to the actual length of the routes over which the passenger travels by means of such transfer. It will be observed that this construction requires the court to read into the franchise words which were not inserted by the council and which could easily have been inserted had it been the intention of the people to make the mileage the basis of settlement. It was not the intention that mileage should have anything to do with this matter; the route was considered as a unit, irrespective of its length.

Each route has the right to charge five cents for a ride, whether the route of either company be a mile or ten miles in length; the same principle applies in the case of transfers. Each company was to receive its even proportion of the fare for giving the passenger a ride over its route, irrespective of how long said route might be. Therefore, we earnestly contend that these words cannot be inserted in

the franchise since this would result in making a new franchise and would be indulging in a liberal construction of this document for the purpose of defeating the public's rights therein. This franchise might be construed strictly against the grantee and strongly in favor of procuring of the rights of the people. The appellant is asking this court to reverse this rule; to insert words in the franchise and to indulge in a liberal construction in favor of the grantee and against the public, for the purpose of annulling the express duty imposed therein of issuing and receiving transfers.

But, even if we adopt this view and insert the word "mileage," as requested, appellant is none the gainer. It will be borne in mind that under appellant's contention it is not the distance he can ride; in other words, it is the mileage of the car or route on which he travels that forms the basis. If transfers are issued between the two companies, they must be issued at the points where the lines of the companies intersect. If it is the mileage that is the basis and not the distance which the passenger actually travels, then obviously it must be the distance which he can travel on a transfer on the line of either company from such point. If the cars on

each line were routed through to the farthest termini of the line of each company from said point, then the question would be simple. You would simply take the number of miles between the intersecting point to the terminus of The Seattle Electric Railway line from said point and compare it with the length of line from said point to the terminus of the Seattle, Renton & Southern Railway Company line. *In every instance the distance which a passenger could travel from said point on the line of the Seattle Electric Company would exceed the distance which he could travel on the line of the Seattle, Renton & Southern Railway Company;* in other words, at each and every intersecting point The Seattle Electric Company offers a greater length of ride on a transfer issued by the Seattle, Renton & Southern Railway Company than a passenger would have should he present a transfer at said point to the line of said latter company. In the map which we have made an exhibit in this case we show each point where the lines of the two companies intersect. We have shown the distance by the most direct line from said point over which a passenger could or can travel on a transfer on the line of The Seattle Electric Company. For the purpose of

making this clear, we have obliterated all other portions of the vast network system of The Seattle Electric Company, just as if the line intersecting at this specific point belonged to an independent company; thus, if you take the length of connected trackage over which a passenger could ride by the most direct route for a single far on the line of The Seattle Electric Company from each intersecting point, it is found that the distance which he can ride on the Seattle Electric Company is always greater than on the line of the Seattle, Renton & Southern Railway Company.

Now, assuming that it is not the distance which a passenger can ride which is the test, we then come to the proposition that it is the length of the entire route of The Seattle Electric Company at each intersecting point that is to be compared with the entire route of the Seattle, Renton & Southern Railway Company. At every point where the track of The Seattle Electric Company intersects with that of the Seattle, Renton & Southern Railway Company, such line must obviously have two termini. In each instance we give the Seattle, Renton & Southern Railway Company the two termini farthest apart so as to give them the greatest amount of possible

mileage at each intersecting point; therefore, we give the route of the Seattle, Renton & Southern Railway Company a total mileage of 6½ miles. Then we take the two termini of each track of The Seattle Electric Company intersecting the Renton line. A passenger can travel between these two termini for five cents just the same as he can on the line of the Seattle, Renton & Southern Railway Company. The length of the route over which he can travel is in each case greater than the total length of the Seattle, Renton & Southern Railway Company's route. Thus, if on each intersecting line The Seattle Electric Company route a car from the southern terminus to the northern terminus, the route of the car of The Seattle Electric Company receiving the transfer, or issuing it, as the case may be, would be greater than the route of the car of the Seattle, Renton & Southern Railway Company. *The undisputed evidence, therefore, bears out this statement, first, that if you take the mileage a passenger could ride from each intersecting point as the test, the Seattle, Renton & Southern Railway Company would be entitled to less than fifty per cent, in each and every instance; and, secondly, if you take the mileage of the track of The Seattle*

Electric Company between its two termini on opposite sides of the Renton line, which constitutes its route, at each intersecting point, over which the cars could be routed and over which a passenger can travel for a five-cent fare in each and every instance the Seattle, Renton & Southern Railway Company would be entitled to less than fifty per cent. (Transcript, pp. 40 to 62.)

(c) That the Test Is the Mileage of the Run of the Intersecting Car Alone.

The only possible ground on which the plaintiff in error can show any case is that The Seattle Electric Company does not deem it expedient to route all of its cars the entire distance between the two termini of each intersecting points. Certain of the intersecting cars have short runs, and at the end of each run they transfer to other cars which complete the route. Appellant claims that because certain of these car runs are shorter than its own it is entitled to more than fifty per cent.

If this theory is adopted The Seattle Electric Company will so route its cars that only the long runs intersect with the Renton line. The short run cars will be stopped at transfer points a couple of

blocks away from the Renton line and the passengers desiring to proceed onward will be transferred to the long route cars going in the same direction.

As we have stated in subdivision II-b, the length of run of the particular car intersecting the line is immaterial, because that is only a connecting link, or part of the entire route, which crosses the Renton track.

It must be borne in mind that the right of ride from each intersecting point to the respective terminus of The Seattle Electric Company is longer than that of the Renton line; and further that every passenger of The Seattle Electric Company crossing the other line is on a route which is longer and gives him a longer ride than the entire length of the Renton franchise line. In compiling these figures and preparing the maps we have given appellant the benefit of every doubt. We have taken the straightest line of track of The Seattle Electric Company between its two termini in computing mileage. He could travel along this specific line for five cents, though he might have to transfer several times, or he could travel between the two termini by a more circuitous route, which would have some of the

transferring. We have taken the shortest distance between each two termini and in each case find the route longer than the line of plaintiffs in error.

The method of routing the cars is not controlled by the city or by the franchise; it is a matter left entirely to the judgment and discretion of The Seattle Electric Company; the franchise merely provides that a passenger shall have the right to ride the entire distance between any two of the termini of the system, whether a single car be routed over the entire distance, or whether the company prefers to divide the route between two or three cars, have each of them travel a part of the distance, and transfer passengers from one to the other. In any event, the passenger may have the right to ride between the two termini, irrespective of the actual run of the car upon which he enters. If this contention is to be upheld, it places it within the power of the companies to forever prevent any possible system of exchanging transfers. They have the right to change the routing of their cars as often and to such extent as they please, and they are constantly exercising this right. With this power they could so route their cars and so constantly and frequently change such routing as to make it an absolute impossibility to

compute the mileage of the routes, or to have any established basis of settlement. If matters were on this basis, the two companies, by voluntarily changing the route of their cars, could render it impossible to have any basis of exchange at all. The facts in this case show the absurdity of counsel's contetion.

The position of plaintiff in error is certainly inconsistent. It concedes that it is not the mileage which the passenger actually rides which is the test, and at the same time contends that it is not the length of ride which is held open to him. If mileage has anything to do with it, it must be one or the other. The mere run of the car on which he embarks is immaterial, under the transfer system, since that run may be changed at the volition of the company sought to be bound, and since by means of transfers he may proceed to the far terminus of the line in identically the same way as if the original car ran that entire distance.

Plaintiff in error has referred at length to certain letters and tables purporting to come from the former superintendent of public utilities. These are, of course, utterly immaterial in this action. They were prepared in response to letters from plaintiff in error, setting up the theory discussed under II-e

for the purpose of showing percentages to be derived therefrom.

Plaintiff in error contends that a petty official, vested with limited powers, can, by placing his construction upon a franchise contract, conclusively foreclose the right of the highest court of a state from placing upon such franchise contract any other construction, and that a conclusion, as to the meaning of such franchise reached by such court and differing from the construction placed thereon by such official, deprives the grantee thereunder of his property without due process of law. (Brief of Plaintiff in Error, pp. 27 to 34.)

The letters written to the plaintiff in error and The Seattle Electric Company (Transcript, pp. 107 to 109), furnish the only evidence properly before this court upon which plaintiff in error can predicate the foregoing contention. These letters are not unequivocal and without condition. The most casual reading of them will disclose that the ideas therein expressed might be subject to revision or change. The conclusive effect of such construction by the official in question urged by plaintiff in error presents a very novel legal theory. Admitting, however, for the sake of this argument only, that the

construction placed upon the contracts in question by the official was intended by him to be clear and unequivocal, still no court has yet held that such construction would be conclusive upon the appellate court of this state. The cases cited by plaintiff in error in its brief go no further than to state the rule that the construction placed upon such a contract by the city itself is not conclusive, but only a fact or circumstance to be taken into consideration along with all the other evidence and facts in the case, in ascertaining the intent and real meaning thereof. No court has ever held that a construction placed upon a contract by a petty official forecloses the right of an appellate court to interpret such contract in the light of all the rules of construction and all of the evidence before it.

It is also urged that legislative construction of the contracts in question is also binding upon the Supreme Court of the State of Washington and that it had no right to place upon them a construction differing therefrom. Such contention, however, is not based upon the record now before this court. Neither Ordinance No. 25038 nor any of the negotiations leading up to its passage are made a part of the record before this court and cition of au-

thority is unnecessary to sustain the ruling that this court has no right to go in search of these matters outside the record.

According to the contention of the plaintiff in error, said Ordinance No. 25038 became effective about October 3, 1910 (Transcript, p. 100); and the record also shows that the trial court has decided in favor of the defendant in error and sustained its interpretation of the cause in question of March 1, 1910 (Transcript, p. 35).

It is obvious, therefore, that the trial court, holding its sessions in The City of Seattle, had placed upon the clause in question the same construction later affirmed by the Supreme Court of the state. It is fair to presume that the legislative body of The City of Seattle, which seven months later passed said Ordinance No. 25038, had full knowledge of and was familiar with the decision and such construction made by the trial court while the said negotiations were pending and at the time it passed said ordinance, and that such ordinance was passed in view and in contemplation of such decision and such construction.

This view is also strongly confirmed by the fact

that the same attorneys who represented the defendant in error in the trial court were the Corporation Counsel and Assistant Corporation Counsel, respectively, of The City of Seattle during all of the times herein referred to (Transcript, p. 40).

Plaintiff in error does not dispute that it owes the duty of issuing transfers on a cash fare to any company that will exchange on the basis of appellant's franchise. The Seattle Electric Company is here offering to exchange on that basis. The defendant in error presented plaintiff in error a cash fare and demanded a transfer, which was refused. The Seattle Electric Company has expressed its willingness to accept such transfer and exchange on the proper basis. These are the facts of the case and present the only issue to be determined.

In conclusion, therefore, we submit that under the proper construction of this franchise and under well settled rules of interpretation, the Seattle, Renton & Southern is entitled to such basis of settlement as one is to two, viz.: fifty per cent. Furthermore, if all of the rules above mentioned be waived and the additional words contended for be inserted in this franchise, still the Seattle, Renton & Southern

would in no event be entitled to more than that fifty per cent. which it has been offered.

We, therefore, respectfully submit that the decree of the court commanding this plaintiff in error to exchange transfers on a fifty per cent. basis on each cash fare is in accordance with the terms of its franchise and that none of its legal or vested rights are in any way interfered with by such order.

We respectfully urge this court to affirm the decision of the state court in all respects.

Respectfully submitted,

WILLIAM B. ALLISON,
Attorney for Defendant in Error.

JAMES E. BRADFORD,
HOWARD A. HANSON,
RALPH S. PIERCE,
Of Counsel.

SEATTLE, RENTON & SOUTHERN RAILWAY COMPANY *v.* STATE OF WASHINGTON, EX REL. LINHOFF.

ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

No. 107. Argued December 9, 1913.—Decided December 22, 1913.

This court does not sit to revise the construction of documents by the state courts, even if alleged to be contracts within the protection of the Federal Constitution. *Fisher* v. *New Orleans*, 218 U. S. 438.

It takes more than a misconstruction by the state court to make a case under the Fourteenth Amendment.

The state court, and not this court, is the judge of its own jurisdiction.

This court will not hold that the state court had no jurisdiction to determine rights under an ordinance because it had been superseded by a later ordinance when the latter does not appear in the record,

and the highest court of the State has held in another case that it does not affect the case at issue.

Writ of error to review 62 Washington, 544, dismissed.

THE facts, which involve the jurisdiction of this court to review judgments of the state courts, are stated in the opinion.

Mr. James A. Kerr for plaintiff in error, submitted.

Mr. Howard A. Hanson, with whom *Mr. William B. Allison*, *Mr. James E. Bradford* and *Mr. Ralph S. Pierce* were on the brief, for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This writ of error seeks to reverse a judgment in mandamus requiring the plaintiff in error, a street railway, to issue and accept transfers to and from the Seattle Electric Company, another street railway, redeemable by payment of two cents and a half for the ordinary five cent fares and of one cent and a quarter for school childrens' tickets costing two cents and a half. 62 Washington, 544. The Seattle Electric Company was made a defendant but did not appeal from the judgment of the court of first instance, affirmed by the Supreme Court. The plaintiff in error contends that its property is taken without due process of law by the construction given to the ordinance under which it was operating its line when the suit was brought. That ordinance requires a division "on the basis of settlement that the transfer is to be redeemed at or for such a proportionate part of the fare paid as the run or local route of the car on which transfer is received, bears to the sum of the runs of the local route of the cars from which the transfer is issued and on which the transfer is received." The Supreme Court construed the words 'or local route' as meaning 'the entire distance the passenger may travel upon that system of railway as if he had paid the ordinary

fare, whether he changes cars upon that system or not.' 62 Washington, 549. Noting that the Electric Company had not appealed, it decided for an equal division of the fares. At every point of intersection between the two roads, the line of the Electric Company is longer than that of the plaintiff in error. In some cases a single car is routed over the entire length, in others the routes are divided, but a passenger is entitled to a transfer that will take him the whole length in the same general direction. Whether there shall be a continuous single route or a divided one is determined by each company for itself.

The possibility of a different construction and the grounds for the one adopted both are obvious, but this court does not sit to revise the construction of documents by state courts, even if alleged, as this ordinance is not alleged, to be contracts protected by the Constitution of the United States. *Fisher* v. *New Orleans*, 218 U. S. 438. There is no impairment of rights by later legislation, and it takes more than a possible misconstruction by a court to make a case under the Fourteenth Amendment. *Cross Lake Shooting & Fishing Club* v. *Louisiana*, 224 U. S. 632, 638; *Ross* v. *Oregon*, 227 U. S. 150, 162; *McGovern* v. *New York*, 229 U. S. 363, 370, 371.

The plaintiff in error put forward suggestions of want of jurisdiction of the Supreme Court, &c., on the ground that since this suit was begun the ordinance referred to has been superseded by another. The Supreme Court, not we, is the judge of its own jurisdiction, but the later ordinance does not appear in the record. It was held not to affect the case when brought up at an earlier stage. 62 Washington, 124. In short, while the Railway seems to have brought the case here under a strong conviction as to what were its rights and although it refers to the Constitution in its answer, it discloses no grievance for which it is entitled to any remedy in this court.

Writ of error dismissed.